The Solicitors' Journal

VOL. LXXXIV. **Saturday, April 13, 1940.** No. 15

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
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Current Topics.

Law Reporting.

THE report of the Law Reporting Committee which has recently been published (H.M. Stationery Office, price 6d. net) contains matter which can hardly fail to be of great interest to readers. The committee was appointed in the early part of 1939 by LORD MAUGHAM, who was then Lord Chancellor, to report and advise him in regard to representations which had been made from several quarters to the effect that the great number of law reports which appeared to be increasing was causing difficulty for members of both branches of the profession engaged in the actual work of the courts by reason of their multiplicity, of the expense occasioned by the necessity for purchasing them and the pressure on space available for the storage of books, and that similar difficulties arose in the case of those bodies which maintain law libraries and those who teach law. It should be recalled that the committee consisted of SIMONDS, J. (Chairman), WROTTESLEY, J., Professor A. L. GOODHART, Mr. L. S. HOLMES, Judge TREVOR HUNTER, K.C., Mr. C. LE QUESNE, K.C., Mr. N. L. C. MACASKIE, K.C., Mr. R. F. ROXBURGH, K.C., Mr. J. H. STAMP, Professor P. H. WINFIELD, and Mr. J. F. WOODTHORPE. In a majority report signed by all the members save Professor GOODHART the fear is expressed that the sum of a somewhat long report is negative. That such is the case will not, it is thought, be regretted by practitioners. The signatories are not prepared to deny that there are inconveniences in the present state of affairs, but they are unable to recommend any cure for them which would not bring greater evils in its train. Economic causes, it is said, have created the present supply of reports, and it is possible that the same causes may contribute to their reduction. The problem is not a new one. In the course of an interesting and, it need hardly be said, informative review of the history of law reporting, the majority report quotes the following words from a paper contributed to the *Law Quarterly Review* in 1885 by LORD LINDLEY: "A multiplicity of reports is a great evil. The evil was once intolerable; it may become so again; whether it will or not depends on the profession and on the Council [of Law Reporting for England and Wales]. Let us hope it never will. If it does, a great effort will have failed, and its failure will prove the necessity for legislative interference and for a monopoly of law reporting."

The Present Position.

THE committee summarises the complaints or criticisms of the present state of affairs under six heads: (1) expense, (2) accommodation, (3) repetition, (4) the difficulty of tracing cases, (5) comprehensiveness and accuracy, and (6) the number of cases reported. The first three considerations are dismissed as of little or no substance, the fourth is regarded as a substantial ground of criticism, although the difficulty is regarded as met to some extent by the publication from time to time of the "Complete Current Digest." The fifth criticism is stated to be of a far-reaching and very different character. Its substance is not so much that the reports are numerous as that, being numerous, they are what they are. So far as the "Law Reports" are concerned, their accuracy is recognised. Criticism against them is that they are incomplete in omitting to report cases, not merely of a special character which are properly relegated to special reports, but in which light is thrown upon general legal principles or the construction of Acts of Parliament. "Against the other general reports," the committee states, "it is said that, while they may to some extent make good the deficiencies of the 'Law Reports' by reporting cases not reported there, yet their accuracy is not beyond challenge, and it is a grave matter if, as has more than once happened in recent years, the profession and the public are misled by an inaccurate report." In the committee's view it is impossible to emphasise too strongly the seriousness of this criticism. It is further complained under the same heading that even the number of reports does not ensure safety as regards omissions, but that decisions of importance may be unreported and at some future date be disinterred from their grave in forgotten shorthand notes. As to the sixth head of criticism, it is said that the hearing of suits is protracted and the time of the court wasted by the citation of authorities of doubtful relevance, and that "if counsel is not darkened, at least first principles are apt to be obscured by the introduction of exceptions and refinements which had better be forgotten."

Monopolistic Reports.

TWO main cures were suggested. The first was that an exclusive right of citation in the courts should be given to the "Law Reports" or some single series of reports established under official control; and, secondly, if there were no monopoly of citation, some system of licensing should be introduced

to place a check upon multiplicity of reports. Both these suggestions are rejected. The first, it is noted, ignores the fundamental fact that the law of England is what it is, "not because it has been so reported, but because it has been so decided." It is the privilege, if not the duty, of a member of the bar to inform the court, whether as counsel engaged in the case or as *amicus curiæ*, of a relevant decision, whether it has been reported or not, and it is likewise the duty of a judge to follow the decision of a competent court, whether reported or not. The committee declines to accept the view that a monopoly of reporting would prevent any decision that could properly be cited being omitted from the reports. Reporters and editors of law reports may make mistakes. The former may come too early to the conclusion that there is nothing worth reporting and absent himself accordingly; the editor may be wrong in thinking there is nothing worth reporting in a report sent in; and in the committee's view it is impossible to say with any confidence that a monopolistic series of reports would be complete. Moreover, these objections are even stronger where special reports are concerned. As to the introduction of a system of licensing, whether to report, or to publish, or by giving the court a discretion as to whether a case should be reported or not, the committee's view is that such proposals are fundamentally wrong. They are regarded as striking at the base of a principle which is one of the pillars of freedom, that the administration of justice must be public. The decisions of the court, it is urged, must be open for publication, discussion and criticism; and it is not consistent with this principle that a licence to report should be given to one man and withheld from another. The committee stress the desirability of full length reports being read and approved by the judges and favours the practice whereby, if a case is reported in the "Law Reports," which are so read and approved, it should be cited from those reports and no others. On the other hand it is recognised that such approval is incompatible with speedy publication, the real need for which in the case of decisions of general importance is duly noted. The committee states that it was impressed and surprised by the evidence it had of the eagerness not only of practising barristers and solicitors, but sometimes also by members of the public, to have a report of some case of which perhaps a notice appeared in a newspaper. Professor GOODHART favours transcripts of all judgments, taken by official shorthand writers, being sent to the judges, revised within a short period, not exceeding if possible a week, returned to a central office at the Law Courts and being rendered available to reporters on payment of a fee. The objections to such a plan, which need not be elaborated here, are duly set out in the majority report.

Divorce for Desertion: Respondent's Evidence in Support.

The Times of 5th April contained a note concerning a case heard on the previous day, in which a wife, who was the respondent in an undefended divorce petition, was called to give evidence in support of her husband's charge of desertion against her. HENN COLLINS, J., commented on the unusual course which had been taken of calling the wife against whom desertion was alleged, and doubted whether the practice was likely to prevail or succeed very often, because the question which the court had to decide was what was the intention behind the actions of the parties. In the case before him the wife's evidence was supported by contemporary documents, and the learned judge expressed himself as prepared to accept her evidence that she had made up her mind not to rejoin her husband. A decree *nisi* was pronounced accordingly.

Tithe Act Annuities: Rate of Interest.

ATTENTION should be drawn to the fact that the Treasury has fixed at 3¼ per cent. per annum the rate of interest to be adopted in discounting future payments in respect of instalments of an annuity charged by the Tithe Act, 1936, for the purpose of determining the amount of consideration money to be paid for the redemption of the annuity, in accordance with the Redemption Annuities (Extinguishment and Reduction) Rules, 1937. The foregoing rate applies from 8th April until further notice. On this basis the amount required to redeem an annuity is approximately twenty-five times the amount of the annuity.

Rules and Orders: Control of Employment.

UNDER the Control of Employment Act, 1939, the Minister of Labour and National Service is empowered by Order to direct "(*a*) that, after such date as may be specified in the order, an employer to whom the order applies shall not, except with the consent of the Minister, publish any advertisement stating that he desires to engage any employee to whom the order applies; and (*b*) that, after the said date, such an employer shall not engage or re-engage any such employee unless consent to the engagement or re-engagement has been given by or on behalf of the Minister . . ." (s. 1 (1)). The Control of Employment (Advertisements) Order, 1940, which was recently made by the Minister of Labour and National Service, is the first Order to be made under the Act. It relates to employers in the building industry and in the civil engineering industry, who are thereby to be prohibited, as from 24th April, from advertising for bricklayers, carpenters or joiners without the Minister's consent. As required by a proviso contained in the above-cited subsection a draft of the Order was submitted to a committee consisting of a chairman and equal numbers of representatives of organisations of workers and employers. This committee suggested slight modifications in the definitions of the industries concerned, and the Order is issued with its unanimous support. Such Orders must be laid before Parliament, and either House may annul them within forty days, any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days not being reckoned (s. 5 of the Act). The above Order relates exclusively to such matters as are contained in para. (*a*) of s. 1 (1) of the Act. No Order has yet been made under powers conferred by para. (*b*).

Recent Decisions.

IN *Toogood* v. *Wright* (p. 254 of this issue) the Court of Appeal (SLESSER and CLAUSON, L.JJ., and SINGLETON, J.) upheld a decision of a county court judge to the effect that the plaintiff was not entitled to damages in respect of injuries sustained by being bitten by the defendant's greyhound while she was trying to rescue her cat which was killed. The animal was in charge of a boy not strong enough to hold it and chased the cat into a ten-foot way within the curtilage of the plaintiff's garden.

In *Stuart* v. *Stephen* (*The Times*, 4th April) MACNAGHTEN, J., held that where chips were supplied by the plaintiff for the purpose of playing *chemin de fer* on the terms that at the conclusion of the game the players would pay him the cash value which they represented, the transaction was one within s. 1 of the Gaming Act, 1710, as money advanced for gaming. His lordship accordingly gave judgment for the defendant, who was sued for the principal sum and interest in respect of a cheque drawn by him in favour of the plaintiff and dishonoured on presentation, on the ground that it was given for an illegal consideration under the Gaming Acts, 1710 and 1835.

In *Re Gaumont-British Picture Corporation, Ltd.* (*The Times*, 9th April), CROSSMAN, J., held that the chairman of a company was not entitled to refuse to answer questions put to him by an inspector appointed to investigate the affairs of the company on the ground that a shorthand writer had been instructed to be present and take down the examination (see *Hearts of Oak Assurance Co., Ltd.* v. *Attorney-General* [1932] A.C. 392).

Criminal Law and Practice.

THE RUSSELL CASE AND EVIDENCE OF AN ACCUSED PERSON.

IT is a strange reflection nowadays that at common law a person charged with crime was not competent to give evidence either for the defence or even for the prosecution. He was allowed to make a statement not on oath, as he may do to-day if he elects not to go into the witness box, but it was actually not until 1898, when the Criminal Evidence Act was passed, that it was finally enacted that "every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person."

This statutory right is unqualified except by provisoes which are mostly in favour of the accused person. For instance, he may not be called as a witness, except upon his own application; the prosecution may not comment in any way on the failure of an accused person or his or her wife or husband to give evidence; the wife or husband of the person charged may not be called as a witness except upon the application of the person charged; a husband is not compellable to disclose any communication made to him by his wife during the marriage, and a wife is not compellable to disclose any communication made to her by her husband during her marriage; and so on.

A conviction was recently quashed in the Court of Criminal Appeal on the ground that a defendant was wrongly precluded from giving evidence as to his belief (*R.* v. *Carmichael*, 56 T.L.R. 517). The case was one of alleged incest with a daughter, and the learned judge at the trial had held that the defendant was precluded by the rule in *Russell* v. *Russell* [1924] A.C. 687 from giving evidence as to his belief that the woman with whom he was charged with having had illicit intercourse was not his daughter. "To preclude a defendant on his trial," said the court, "from giving evidence of his belief and the ground for it seems to us to deprive him of one of the most elementary rights of an accused person and to be a negation of justice where the proof of knowledge or no knowledge is vital to conviction or acquittal."

The indictment charged the commission of incest on dates between June, 1932, and May, 1933, and between August, 1934, and August, 1937. The appellant was married in 1912 and had two daughters, E, born on 11th April, 1913, and S, the subject of the indictment, on 18th May, 1915. Throughout the whole of 1914 the appellant lived in London and his wife lived in Cambridge, and he used to visit his wife from time to time at week-ends. There was some evidence that the wife of the appellant was associating with another man, W, in about August, 1914, nine months before the birth of S, but no evidence was available of her adultery with W at that time.

In the autumn of 1915 the appellant went with his regiment to France, and during 1916, while he was in France, his wife committed adultery with W. The appellant obtained a divorce on this ground in November, 1916, and in July, 1918, he married G. From 1916 to 1926 the appellant's two children, E and S, lived with his mother, but in 1926 they went to live with the appellant and his wife.

In 1932 the appellant separated from his wife owing to her suspicions as to his relations with S, and after this separation he lived with S and she bore him three children. He did not deny that he was the father of these children, and had from time to time acknowledged that he was the father of S, particularly in his affidavit verifying the divorce petition of 1916, where he stated that there was living issue of the marriage two children—namely, E and S.

At the end of the case for the prosecution the appellant gave evidence on his own behalf. Counsel for the appellant was permitted by the learned judge to ask the question: "At the time you had intercourse with S, did you know she was your daughter?" He replied: "I knew she was not my daughter." On being told by the judge that he must answer the question "Yes" or "No," the appellant said "No." Counsel for the appellant then asked: "Who first informed you that S was not your daughter?" The appellant would have replied that it was the mother of S who told him, but the learned judge disallowed the question on the ground that it would infringe the rule in *Russell* v. *Russell*. In summing up to the jury, he told them that there were very good reasons why the rule was formulated, and that it applied to all cases, including criminal cases.

Section 1 of the Punishment of Incest Act, 1908, provides: "Any male person who has carnal knowledge of a female person, who is to his knowledge his granddaughter, daughter, sister, or mother, shall be guilty of a misdemeanour." The rule in *Russell* v. *Russell*, *supra*, is that neither a husband nor a wife is permitted to give evidence of non-access during marriage which would have the effect of bastardising a child born during wedlock, and that this applies to all proceedings instituted in consequence of adultery, whether those proceedings are actually legitimacy proceedings, or merely divorce proceedings or proceedings for a judicial separation. This, it will be remembered, was the opinion of a majority of three lords of appeal over two, reversing a unanimous Court of Appeal which had upheld a decree *nisi*.

It is interesting to observe that Lord Birkenhead, in commenting on the effect of s. 3 of the Evidence Further Amendment Act, 1869, which enabled parties and their husbands and wives to give evidence in proceedings instituted in consequence of adultery, said (at p. 702 of [1924] A.C.) that its only effect was to make such persons competent to give such testimony as the law of evidence allowed at that date, or, as afterwards modified, that law might allow.

It will also be recalled that the judgments reversing the order of the Court of Appeal were based on the dicta of Lord Mansfield in *Goodright* v. *Moss* (1777), 2 Cowp. 591: "The law of England is clear that the declarations of a father or mother cannot be admitted to bastardise the issue born after marriage . . . But it is a rule, founded on decency, morality and policy, that they shall not be permitted to say after marriage that they have had no connection and therefore that the offspring is spurious; more especially the mother, who is the offending party." Viscount Finlay (at p. 719 of [1924] A.C.) pointed out that it was admitted that evidence of non-access by husband or wife was inadmissible in peerage cases and in actions for ejectment of land as well as in legitimacy cases.

The Court of Criminal Appeal, in *R.* v. *Carmichael*, *supra*, decided that evidence by the appellant that his wife had told him that he was not the father of S was no evidence at all that he was not in fact her father, and would be irrelevant and inadmissible on the question of the paternity of the child. It was, however, the court held, plainly relevant to the question whether the appellant knew that S was his daughter since, if the jury were satisfied (1) that S's mother did, in fact, tell the appellant that he was not the child's father, and (2) that the appellant believed her statement to be true, he would be entitled to a verdict of "not guilty."

The curious result of any other decision, the court said, would be that the appellant would be permitted to deny on oath that he knew that S was his daughter, but could give no reason for his belief, either in examination-in-chief or in cross-examination. Moreover, the Crown had proved admissions that S was his child, but any statements by the appellant to the contrary, which might have explained his admissions, would have been excluded.

The court held that the question whether A was B's daughter was entirely different from that whether to B's knowledge she was his daughter. This, no doubt, is the

crux of the matter and, as the court pointed out when Lord Sumner, in his dissenting judgment in *Russell* v. *Russell* (at p. 739 of [1924] A.C.), said that the result of the rule would be to deprive a person accused of incest of his defence, he was referring to the defence that the person with whom he was charged with committing incest was not his daughter, not the defence that he did not know she was his daughter.

The point is thorny, not merely because of the profound cleavage of judicial opinion displayed in *Russell* v. *Russell*, but also because of the difficulty of considering the question of the genuineness of a belief without considering the information on which the belief is based and, in the *Carmichael Case*, consideration of the latter point involved consideration of the wife's statement that S was illegitimate. It may well be that even if the judge in the court below was right in applying the *Russell Case* to criminal proceedings, the latter evidence was admissible having regard to the decision in *Warren* v. *Warren* [1925] P. 107, that a wife's admission of adultery even if accompanied by a statement that she believed a child subsequently born to be a result of the adultery and therefore illegitimate was admissible, as it did not by itself bastardise the child. Perhaps this is not the last that we shall hear of one of the most interesting points that have come before the Court of Criminal Appeal for some time.

Modern Problems of the Law of Nationality.

(*Continued from p.* 227).

"ALIEN" BRITISH WIVES AND "BRITISH" ALIEN WIVES.

SUBJECT to some important qualifications to be dealt with below, a British woman by marrying an alien loses her British nationality. Section 10 (6) of the British Nationality and Status of Aliens Act, 1914–1933, enables her, however, to resume British nationality, provided her husband is an enemy subject and she herself was a natural born British subject.

If such a woman wants to avail herself of this possibility she may make a declaration to this effect, and thereupon "the Secretary of State, if he is satisfied that it is desirable that she is permitted to do so, may grant her a certificate of naturalisation."

Sir John Anderson, in the House of Commons on 23rd November, 1939, made the following statement: "Whereas in the last war naturalisation was granted only to women separated from their husbands, I do not propose to adopt the same restriction now, but will limit my discretion only to the extent that is necessary to avoid impairing measures of control which must be maintained in time of war over persons of enemy nationality. If a British woman is living with a German or Austrian husband whom it is necessary on security grounds to subject to the special restrictions applicable to enemy aliens it would not as a rule be right to naturalise the wife . . . I have accordingly decided that any such woman may as soon as her husband has been exempted from the special restrictions, apply for naturalisation and that arrangements shall be made to deal with such applications expeditiously."

This way, however, is open to wives of enemy subjects only and does not affect the general problem of the national status of married women—either of foreign women married to British subjects, or of British women married to aliens. The question has been widely discussed recently in the daily press in connection with the hardship felt by British women marrying refugees, whose "nationality" sometimes does not even include the right to a passport, not to speak of civic rights, and in connection with some cases of "marriages of convenience," whereby women refugees acquired British nationality.

Both questions are in law closely connected with each other, presenting two aspects of the same problem, the history of which may be summarised as follows:—

Under the common law, the rule prevailed "*nemo potest exuere patriam.*" Accordingly, by common law, like naturalisation in general, marriage in particular had no effect on the nationality of women. An English woman marrying an alien remained a British subject and an alien woman marrying a British subject remained an alien and although being the wife of a British citizen, was subject to all disabilities attached to an alien by common law.

As early as 1844, however, it was enacted that "any woman married, or who shall be married, to a natural-born subject or person naturalised, shall be deemed and taken to be herself naturalised and have all rights and privileges of a natural-born subject" (7 & 8 Vict., c. 66, s. 16).

On the other hand, the rule that a British woman by marrying an alien did not lose her British nationality remained law until 1870 when it was felt that this rule involved so many inconveniences that it should be abolished. Accordingly, by the Naturalisation Act, 1870 (33 & 34 Vict., ch. 14, s. 10), it was enacted that "a married woman shall be deemed to be a subject of the State of which her husband is, for the time being, a subject" and when this Act was repealed by the British Nationality and Status of Aliens Act, 1914, it was re-enacted (s. 10) "that the wife of a British subject shall be deemed to be a British subject and the wife of an alien shall be deemed to be an alien."

The first part of this enactment is still the law to-day and thereby an alien woman by marrying a British subject acquires by the mere reason of her marriage British nationality.

As practically every rule of law it is and always has been open to misuse, and the problem how to avoid "marriages of convenience" with the sole purpose of making "the wife" a British subject has arisen before under more questionable circumstances than in the case of refugees.

It is doubtful, however, whether the mere fact that an otherwise sound rule of law can be abused justifies such sweeping an amendment as advocated by some reformers, intending to abandon the rule altogether and substituting for it the provision that an alien woman shall have the right to apply for British nationality on the same terms as an alien man, without any reference to the fact of her marriage to a British subject. The same result could be obtained by a further reform of the law of divorce, e.g., by declaring such marriages null and void excluding thereby automatically any change in the woman's national status; such an amendment would punish any abuse and still protect the abundant majority of legitimate marriages.

These rules apply only if the husband is a British subject at the time of the celebration of the marriage. When, during marriage, the (alien) husband acquires British nationality by naturalisation, his wife (since 1934) acquires that status only if she makes a declaration to that effect (s. 10 (3)).

The second part of the enactment of 1914, however, namely that the wife of an alien is deemed to be an alien, has been qualified by 23 & 24 Geo. 5, c. 49; by this Act in effect it has been enacted that notwithstanding the general rule a British woman shall not lose her British nationality by the mere reason of her marriage to an alien unless, by reason of her marriage, she acquires the nationality of her husband. In other words, if by the national law of the husband the woman does not acquire the husband's national status, the wife shall not lose her British nationality and thereby become stateless but retain her British nationality. This law has been adopted by several Dominions.

Similar provisions safeguard the position of a British wife if the husband ceases to be a British subject during the continuance of the marriage (s. 10 (3) (4)).

A British woman, e.g., by marrying an American subject, retains her British nationality as, by virtue of the American law she does not, by reason of her marriage, acquire *ipso jure* the nationality of her American husband. The same holds good in the case of an Anglo-French marriage, unless the British bride voluntarily chooses to acquire French nationality.

In the case of Anglo-German marriages, especially where the man is a refugee, the status of the wife depends on whether or not the refugee has lost his nationality, in most cases by compulsory expatriation. If thus or otherwise he has become stateless his wife retains her British nationality, otherwise she loses it, inasmuch as by German law she acquires automatically the nationality of her husband. If the husband fulfils the conditions as laid down by the Secretary of State, she may now be re-admitted to British nationality as a "naturalised subject," although before her marriage she was British by birth. In *Fassbender* v. *A.-G.* [1922] 1 Ch. 232; C.A. [1922] 2 Ch. 850, it was held that unlike naturalisation abroad or a declaration of alienage marriage to an enemy alien operates to terminate British nationality, even in war time. "Under s. 10 alienage attaches *in invitum* to the wife as a statutory by-product of marriage to an alien husband" and unlike the former it is not a "formal act whose sole object is" (under s. 13) "to acquire enemy nationality and terminate British nationality, and" (under s. 14) "to terminate British nationality so as to leave enemy nationality as the sole survivor" (*per* Russell, J.).

A curious and probably unforeseen consequence of the Act of 1933 relates to the case of a woman of double nationality, e.g., British by birth under English law and German by descent under German law. If such a woman marries a man of her own additional nationality she retains her British nationality, as by marrying a man of her second nationality she cannot, as a rule, acquire that additional nationality "by reason of her marriage." Experience shows that this state of affairs is more frequent than could be expected.

On the other side, revocation of naturalisation does not affect a wife who by birth was British, unless the Secretary of State is satisfied that if she had held a certificate of naturalisation in her own right the certificate could properly have been revoked under this Act (s. 74, proviso (*b*)).

(*Concluded.*)

Company Law and Practice.

Power of Court to grant Relief from Liability to Directors and Officers of Company.

In proceedings against an officer of a company for negligence, default, breach of duty or breach of trust, the court is empowered, if it appears that the officer has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, to relieve him, either wholly or partly, from liability on such terms as the court may think fit (s. 372 (1) of the Companies Act, 1929). These provisions recall the similar provisions of s. 61 of the Trustee Act, 1925, which enables the court to relieve trustees who have acted honestly and reasonably and ought fairly to be excused. A corresponding section appeared in the Companies (Consolidation) Act, 1908 (s. 279), though that section was of less wide application; it enabled relief to be given only to a director and only for negligence or breach of trust. Section 372 (4) of the 1929 Act provides that the section is to apply to directors, managers, officers, and persons employed by a company as auditors, whether they are or are not officers of the company; and the section is applicable to cases not only of negligence or breach of trust, but also of default or breach of duty.

The 1929 Act introduced a further fresh provision into the section, by virtue of which, if a director or other officer of the company has reason to apprehend that a claim will be made against him for negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court has the same power to relieve him as if it were the court before which proceedings for negligence, etc., had been actually brought. That is to say, the court has now power in a proper case to grant relief against prospective liability.

An application for relief against such liability was made in *In re Barry and Staines Linoleum, Ltd.* [1934] Ch. 227. There the articles of the company fixed as the qualification of a director the holding of ordinary shares of the nominal amount of £500. A director who held preference shares to the nominal value of over £1,000 failed to obtain the ordinary shares necessary for his qualification within the time (two months) fixed by the articles, mistakenly believing that under the articles shares of any class counted towards a qualification. He continued to act as a director for some three years, although by virtue of s. 141 (3) of the 1929 Act he had vacated his office at the expiration of the two months fixed by the articles. As a result, he was liable under s. 141 (5) to a fine of £5 for every day between the time when he ceased to hold office and the last day on which he acted as director. In addition, he had received remuneration as a director during the whole period in which he had acted as such, and since, in fact, he was not a director, might have been proceeded against by the company to recover the amount of the remuneration so received.

Accordingly he presented a petition to the court under s. 372 of the Act, and asked to be relieved (*a*) from any liability for fines or penalties which he might have incurred, and (*b*) from any liability which he might be under to the company in receiving remuneration in respect of the period during which he acted as but was not in fact a director. Maugham, J. (as he then was), said that it was beyond doubt that the section applies to proceedings in a court of summary jurisdiction to recover a penalty imposed on directors and others under the Act, and accordingly subs. (2) enables the court to grant relief to a director apprehending the institution of such proceedings. In the present case the learned judge was satisfied that the petitioner had acted honestly and reasonably and ought to be excused, and granted him relief from liability to the fine imposed by s. 141 (5).

As regards the claim to be relieved from liability to repay the amount of the remuneration received, Maugham, J., expressed the view that though the court had jurisdiction to grant relief this jurisdiction ought to be exercised with great care, and only after evidence as to the opinions held on the subject by the persons concerned, i.e., the shareholders where the company is solvent, and the creditors where it is insolvent, for they are the persons who would benefit from an order on a director to pay money to the company. In the case before him the company was solvent, but he had no information as to the attitude of the shareholders, and accordingly would not grant relief from liability in respect of the remuneration received.

In *In re Gilt Edge Safety Glass, Ltd.* (1940), 56 T.L.R. 478, the circumstances in which relief was sought were not dissimilar to those in the case I have just mentioned. There the petitioner had incurred possible liabilities of the same kind by reason of his ceasing to hold the required qualification shares: this had come about as a result of a reduction of the company's capital. The company's articles fixed as the qualification the holding of shares of a nominal amount of £10; these the petitioner had acquired on being appointed a director, but after a reduction of capital the nominal value of these £10 shares was reduced to £3 6s. 8d. Not realising that he was disqualified, the petitioner continued to act as a director for over two years and received remuneration for his services as such. Subsequently, police court proceedings were commenced against the petitioner under s. 141 (5) of the Companies Act, and in addition he received an intimation

from the company that the fees he had received whilst disqualified must be returned. Accordingly he presented a petition under s. 372 of the Act asking for relief from liability for fines under s. 141 and from liability to the company in respect of the receipt of remuneration.

Subsection (1) of s. 372, which enables the court to give relief in actual, as opposed to apprehended, proceedings for negligence, default, etc., on the part of a director, confers that power on "the court hearing the case." Consequently, in regard to the police court proceedings, which had already been begun, it was held by Crossman, J., that he could not grant relief, the police court alone having jurisdiction to give relief in respect of liability for fines and penalties once proceedings had been instituted in that court.

The claim for relief against apprehended liability in respect of the remuneration received by the petitioner while disqualified was opposed by the company, and reliance was placed on Maugham, J.'s judgment in *In re Barry and Staines Linoleum, Ltd., supra*, for the proposition that where the company is unwilling that an order granting relief be made the court should not make the order. Crossman, J., however, said that it seemed to him that what Maugham, J., was referring to was the necessity of his knowing what view the shareholders took before he could grant relief, but that it did not follow that because the shareholders opposed the application there was no jurisdiction; it was only one of the circumstances to be taken into account. In the present case the petitioner had acted honestly and reasonably; the failure to realise that the reduction of capital operated to disqualify him was excusable, and no loss had resulted to the company, and in the circumstances the petitioner ought fairly to be excused for the default and should be granted relief from apprehended claims.

Two points of practice may be noted with regard to applications for relief under s. 372 (2). Order 53B, r. 5 (*i*), provides that the application shall be by petition and winding up; rule 66 (1) that it shall be by summons. In the two cases to which I have referred the application was by petition, the company in either case being a going concern, and it seems, therefore, that this is the proper procedure except where the company is in liquidation, in which event proceedings should be instituted by summons. Secondly, in the *Gilt Edge Safety Glass Case* the Board of Trade appeared on the hearing, and it was stated on its behalf that as, generally speaking, it was responsible for prosecutions under the Companies Act it was desirable that it should be informed when relief was sought under s. 372; and it appears from the report that the learned judge, while not prepared to lay down that this was essential, agreed with the view that it was desirable in practice.

Finally, it should be observed that relief may be granted under s. 372 in respect of a transaction which is wholly *ultra vires* the company. A director who applies the company's funds *ultra vires* the company commits a breach of trust, and breaches of trust are expressly mentioned in the section (see *In re Claridge's Patent Asphalte Co., Ltd.* [1921] 1 Ch. 543).

A Conveyancer's Diary.

Rent-charge and Rent-service: Limitation.

I AM asked by a correspondent, who claims to have identified the author of the recent articles on the Limitation Act, 1939, to discuss the case of *Sykes* v. *Williams* [1933] Ch. 285. I hasten to say that, whatever may have been the case regarding the common law section of those articles, the conveyancing parts were primarily the work of a learned friend. As he is not available at the moment, I will deal with the point raised, though with some trepidation.

In *Sykes* v. *Williams* the Court of Appeal, reversing Eve, J., decided that once the right of action to recover a rent-charge has been lost, by its non-payment during the full statutory period, all other rights ancillary to it, such as, for instance, a right of re-entry, are also lost. My correspondent wishes to know whether this decision has any application to the case of a rent reserved on a demise, i.e., a rent-service. The answer is in the negative.

A rent-charge is an incorporeal hereditament; it is a kind of land just as much as is the earth on which one treads or an advowson. That being so, it is a subject-matter in which estates in fee simple for years or for life can exist just as much as they can in any other form of realty. The right to a rent-charge in fee simple is barred on exactly the same principles as a right to a corporeal hereditament in fee simple. That is to say, there must be adverse possession by a disseisor for the statutory period. Where there is disseisin of a corporeal hereditament, the disseisor has physically ousted the true owner from possession. Similarly, disseisin of a rent-charge primarily occurs by ouster of the true owner from receipt of the rent-charge. Owing to the fact that a rent-charge is only payable periodically, it has been necessary to provide arbitrarily for the date from which the statutory period is to run in such cases; time runs from the date of the last receipt of rent by the true owner (see Limitation Act, 1939, s. 31 (6), and s. 5 (1)). In the ordinary case, therefore, the title of the true owner of a rent-charge is barred twelve years after the date on which he last received an instalment; as from that date the title to the rent-charge is vested in the disseisor.

But there is in the natural course of things no disseisin by the rent-chargor where he merely ceases to pay anything to the rent-chargee. In the absence of a special provision, failure to pay would not bar the title to the rent-charge itself, though, of course, arrears could not be recovered for more than six years back (see Limitation Act, 1939, s. 17). Special provision is, however, made for there to be adverse possession in the case of non-payment. It is expressly provided that "possession of any land subject to a rent-charge by a person (other than the person entitled to the rent-charge) who does not pay the rent shall be deemed to be adverse possession of the rent-charge" (Limitation Act, 1939, s. 10 (3) (*a*)). Accordingly, time will run against the person entitled to the rent-charge in any case where the person liable to pay it is not doing so. Under s. 31 (6), already referred to, the period will start to run at the date of the last receipt of rent.

When the period has fully run in favour of an adverse receiver of the rent the estate of the rent-chargee is extinguished, and the title of the adverse receiver becomes indefeasible. Where time has fully run in favour of a rent-chargor who fails to pay, the estate of the rent-chargee is extinguished, and, as there is no other estate in the charge the effect is that the hereditament itself is extinguished (s. 16). Before that date, of course, the time will arrive when not all the arrears continue to be recoverable: for arrears are only recoverable by action or distress in respect of six years before action brought (s. 17). Once the period has fully run, no arrears are recoverable (*Jones* v. *Withers* (1896), 74 L.T. 572). Such a rule is logical; after the full statutory period has run the Act extinguishes not only the right of action to recover the rent-charge, but the title to the rent-charge also. That being so, there are no arrears to recover; and, similarly, powers ancillary to the rent-charge, such as a right of entry, are extinguished at the same date as the rent-charge to which they are annexed is extinguished. That was the point decided in *Sykes* v. *Williams*.

Entirely different considerations apply to a rent-service. As between the landlord and the tenant, the landlord parts with possession for the whole period of the term. It follows from that that the possession of the tenant can never be adverse to the landlord during the subsistence of the term. The tenant and persons claiming under him are, therefore,

never in a position to acquire a title as against the landlord during the term, because there is never any right of the landlord to possession against which they can adversely possess. There are, of course, frequent cases where *former* tenants have acquired titles against their landlords by holding over after the expiration of the term, especially in cases of tenancies at will or from year to year, to which peculiar rules apply. But in a straightforward case of a demise for a period the tenant is never in a position to acquire a statutory title as against the landlord until he has occupied adversely to the landlord for the full statutory period after the expiration of the term.

If the rent is not paid, there is no period of time during the term the lapse of which will deprive the landlord of the right to the rent itself, as distinguished from arrears. The rent sounds in covenant and falls due in instalments on the dates prescribed by the covenant. It is not comparable to a rent-charge which, once created, is a hereditament to which title can be obtained or lost, quite apart from the right to recover a particular instalment. The right to a rent-service cannot be lost as between the landlord and the tenant: what can be lost is the landlord's right to arrears for a period of more than the six years allowed by s. 17. Even such a breach of covenant as would give rise to a right to re-enter and avoid the term does not cause time to begin to run in favour of the tenant as against the landlord. Such clauses make the lease voidable at the option of the lessor but not void (see *Howard* v. *Fanshawe* [1895] 2 Ch. 581, and *Davenport* v. *R.*, 3 App. Cas. 115, at p. 128). It is expressly provided by s. 8 of the Limitation Act, 1939, that a right of action to recover land in such circumstances is to arise at the date of the breach of covenant, if and only if an attempt is made to enforce a forfeiture for that breach. It follows that if no advantage is taken of a breach of covenant, time will run against the action on that breach of covenant, but will not run in favour of the tenant against the landlord in respect of the land itself; and the landlord can take advantage of a later forfeiture (*Barratt* v. *Richardson* [1930] 1 K.B. 686).

The result is that the rule laid down in *Sykes* v. *Williams* can have no application at all to cases where the rent is one in respect of a leasehold. A rent-charge is a legal entity and is of an entirely different nature from a rent-service; the one is a hereditament and has the rules of a hereditament; the other is an incident of the relation between the landlord and the tenant and is governed by that fact.

I ought to add that the new legislation has not altered the principles applicable to the points discussed above.

Emergency Legislation: Mortgagees.

I have been asked by another correspondent to deal with a point which does not seem to have been quite clear in my articles at the beginning of the war regarding the position of a mortgagee under the Courts (Emergency Powers) Act, 1939, and the Possession of Mortgaged Land (Emergency Provisions) Act, 1939.

Under the Courts (Emergency Powers) Act, 1939, a mortgagee is precluded from exercising certain remedies without the leave of the court. Those remedies are enumerated in s. 1 (2) of the Act. In that Act nothing is said about the exercise by a mortgagee of his rights as distinct from his remedies. A mortgagee is a lessee during the mortgage term. As such, he has a right to possession of the mortgaged land. He can take possession peaceably without recourse to the court or he can get possession under an order of the court. Where he takes possession out of court, he may, of course, physically enter the land, and may do so where the mortgagor has been in actual possession. But where the land is in lease to a tenant of the mortgagor who pays a rackrent, all that the mortgagee is likely to want to do is to get the tenant to pay the rent to him instead of to the mortgagor. He will, therefore, serve a notice to that effect upon the tenant and the tenant is likely to comply with it. Nothing in the Courts (Emergency Powers) Act takes away his right to get a judgment for possession or to serve the notice described above on the tenants of the mortgagor.

This state of affairs was felt to be anomalous and accordingly the possession of Mortgaged Land (Emergency Provisions) Act was passed after the war had been in progress for about one month. Under that Act a mortgagee is deprived of his right to "obtain possession of the land" unless default had been made in payment of interest or in payment of an instalment of capital repayable by instalments, or in case of a breach of an obligation other than one to pay money, or where the principal money has been called in and payment has not been made within three months of the demand.

In the excepted cases which I have mentioned, the mortgagee retains his right to obtain possession. This he can do by the judgment of the court or by serving a notice. If he elects to go to the court, he will also have to reckon with s. 2 (2) of the Act which makes necessary leave for the enforcement of a judgment for possession obtained by a mortgagee. Where he elects to serve a notice or to enter physically there is nothing to stop him doing so. On the other hand, unless the circumstances mentioned above as exceptions to the main rule laid down in the Act are present, the mortgagee has lost his right to "obtain possession." The meaning of these words may strike different minds in different ways. It may be argued that they refer only to the obtaining of possession by the judgment of the court. Personally, I do not think that they do. If that had been their meaning, the subsection would have operated to restrict a remedy and would accordingly have been *in pari materia* with the Courts (Emergency Powers) Act. It is difficult to say how that can be so. The latter Act is quite differently worded, and if the only intention had been to restrict the right to take possession under the order of the court, all that would have been necessary would have been the provision of s. 2 (2). In any event, there is no reason to construe the word "obtain" restrictively. It is a perfectly general word.

My correspondent asks whether there is any provision which precludes a mortgagee from taking possession, by way of serving notice on a tenant. The answer is that the mortgagee has no right to such possession save in the cases excepted by the Possession of Mortgaged Land (Emergency Provisions) Act. But where those conditions are present there is nothing to stop his exercising his ordinary peace-time right without any appeal to the court.

Landlord and Tenant Notebook.

Flats, Common Schemes and Derogation from Grant.

WHEN writing on the subject of "Flats, Quiet Enjoyment and Common Schemes" in the "Notebook" for 2nd September last (83 SOL. J. 682), I spoke of the plaintiff in *Hudson* v. *Cripps* [1896] 1 Ch. 265 as having blazed a trail since followed by many others. These have now been joined by the plaintiff in the recent case of *Newman* v. *Real Estate Debenture Corporation* (1940), 1 All E.R. 132.

In *Hudson* v. *Cripps* the landlord of a large block of flats set about converting the whole of the building except for one flat into what was called a fashionable club. The flat in question was let to the plaintiff by a printed agreement containing covenants against business, limiting user to residential user, and obliging her to observe a number of regulations which dealt with such matters as the use of lifts, obstruction of landings, the status of the hall porter, etc., which, as North J., held, evidenced "a scheme for the general management of the building." And his lordship held: "Where the landlord enters into such an arrangement with each tenant, it is obviously intended and is, as a matter of

fact, for the benefit of all the tenants." His lordship granted an injunction restraining the use of the premises otherwise than as residential flats or being altered with a view to such use.

There was, perhaps, one feature of the above authority which was not wholly satisfactory, and this one which has been repeated in subsequent decisions except the most recent one. It is this: the plaintiff sued for breach of covenant of quiet enjoyment, alternatively for breach of "an" obligation implied by the agreement. Not very much seems to have been said about the former cause of action, and when arguing the latter her counsel invoked the recognised equity prohibiting departure from building schemes. The learned judge agreed with his opponent that a covenant for quiet enjoyment could be broken only when possession was disturbed, but rejected the contention that there was "a great distinction" between the position of a person who had bought and built on part of a building estate and a single tenant for a short period who, as in that case, could determine the tenancy at once.

The authorities relied on in the judgment in the above case were *Renals* v. *Cowlishaw* (1878), 9 Ch. D. 125, in which Hall, V.-C., defined the principles by which a purchaser of a building plot on a residential estate who has notice of restrictive covenants may be bound by them, and *Spicer* v. *Martin* (1888), 14 A.C. 12, in which those principles were approved and applied to the case of a tenant seeking an injunction to restrain his landlord from authorising neighbouring property to be used for business purposes. But this case was neither argued nor decided by reference to the principle by which a grantor may not derogate from his grant. It is, however, worth mentioning that in his speech Lord Macnaghten, besides referring to the existence of stipulations common to all the leases, observed: "The houses were actually built as private houses, and offered to the public as such. Their character was unmistakable . . ."

Coming now to the facts of *Newman* v. *Real Estate Debenture Corporation* and comparing them with those of *Hudson* v. *Cripps*, we find that the analogy is at times somewhat sketchy. The lease granted to the plaintiff comprised the fourth and fifth floors of a five-storey building; during the first years of his term, the first, second and third floors were let as flats, while the ground floor was and always had been a shop. He thus held two flats in what could not be called a block of flats (colloquially, at all events, though the conditions would just satisfy the definition now contained in the Housing Act, 1936, s. 188 (1)). He had, when negotiating his lease, been asked for social references in addition to the financial references which he had tendered, and it was intimated to him that the building, in so far as it consisted of residences, was meant to be inhabited by people of standing. When we come to examine covenants, however, which played so vital a part in the older case, the analogy is clear. True, there was nothing about porters or coals and closing of outer doors, so commonly the subject-matter of rights and duties created and imposed by tenancy agreements regulating the relations between the tenants and the landlord of "mansion flats"; but there were covenants against trade, against alterations, against annoyance, and positive obligations extended to such matters as the proper cleaning of windows. Almost identical covenants appeared in the leases of the other flats. Thus Atkinson, J., had no difficulty in arriving at the conclusion that the covenants were "clearly for the benefit of the flats and the tenants."

When the grantors of this lease, who were first defendants in the action, granted a lease of the whole building to the tenants of the shop on the ground floor, who became second defendants, the latter proceeded to convert the intervening three floors into a showroom, a workroom, and offices, and the plaintiff took action, complaining (*inter alia*) of the loss of amenity so occasioned. Knowledge on the part of the second defendants—who, it will be appreciated, had never held a lease similar to that of the plaintiff—was established by reference to correspondence about the licences necessary to enable them to effect alterations and change user; but apart from that, the learned judge pointed out that they, or at all events their predecessor in title (they being assignees) had seen the nature of the building. An injunction was accordingly granted restraining further use of the three floors for business purposes.

No injunction could be issued against the first defendants, as they had parted with their reversion; but what is important for the purposes of the present article is that the damages awarded against them were (as to part) expressed to be for the derogation from their grant. In his judgment, Atkinson, J., stated that he was satisfied of two things: that there was a "scheme," and that there was an obligation upon the first defendants not to derogate from their grant—not to do anything which would render the demised premises substantially less fit for use as private dwelling-rooms. His lordship added that there was, in the demise, a covenant for quiet enjoyment, but he doubted whether it was relevant. As mentioned above, in *Hudson* v. *Cripps*, the court accepted the proposition that this covenant applied only when possession was disturbed; this, I believe, is arguable, but the point is outside the scope of the present article. It is also of interest that in the recent cases Atkinson, J., apparently regarded the obligation not to derogate from one's grant as a contractual one, for his lordship spoke of the "breach of covenant not to derogate from their grant": this is likewise arguable, but not pertinent to the present discussion. I may, however, remark that if, as jurisprudence tells us, the law of contract is a comparatively recent innovation, the opening observations of Bowen, L.J., in *Birmingham, Dudley and District Banking Co.* v. *Ross* (1888), 38 Ch. D. 295 (C.A.), at p. 312, bear me out; for the learned lord justice characterised the maxim as "really as old, I will not say as the hills, but as old as the Year Books, and a great deal older."

It so happens that reported cases more often illustrate the limitations of the doctrine when the complaint concerns user rather than physical interference (such as threatening the stability of the demised premises), but the principle is clear. Thus in *Robinson* v. *Kilvert* (1889), 41 Ch. D. 88 (C.A.), a firm of paper merchants occupying one floor of a building sued their landlord who set up a box manufactory in the cellar below involving the use of a boiler, with the consequence that the plaintiffs' stock deteriorated. They were unsuccessful because the lessors had not known, and it was not a matter of common knowledge, that this consequence would follow. But both a review of older authorities and a striking illustration of the applicability of the principle are to be found in *Aldin* v. *Latimer, Clark, Muirhead & Co.* [1894] 2 Ch. 437, when assignees of a reversion were held to have broken the obligation by erecting buildings which interrupted the access to drying sheds on the demised land. Stirling, J., summarised the law as follows: "The result of these judgments appears to me to be that where a landlord demises part of his property for carrying on a particular business, he is bound to abstain from doing anything on the remaining portion which would render the demised premises unfit for carrying on such business in the way in which it is ordinarily carried on." This embodies a principle easily applied to such facts as those of *Newman* v. *Real Estate Debenture Corporation*, and one which operates independently of any building scheme or equities.

Our County Court Letter.

THE CONTRACTS OF SALES MANAGERS.

In a recent case at Coventry County Court (*Prescott* v. *Beech*) the claim was for damages for wrongful dismissal and for commission. The plaintiff's case was that, as from the 14th November, 1938, he was employed as car sales manager at a salary of £6 a week and a commission of 10 per cent. on the gross profits—less cost of repairs and service charges. One month's notice was agreed upon, but, on the 21st August, the plaintiff was dismissed without notice. He therefore claimed one month's wages, in lieu of notice, and commission as from the 31st March. Although the plaintiff had taken a car to Wales for a week-end on trade plates, he was entitled to do so, as the car required a test and there was a prospective customer negotiating for it. The defendant's case was that he had a stock of cars worth about £1,000 when he engaged the plaintiff. Instead of reducing the stock, the plaintiff allowed it to increase, until its value reached £3,000. The defendant pointed out to the plaintiff that few cars were sold in Coventry after Whitsuntide, and that it would not be an economic proposition to retain a sales manager. Nevertheless the plaintiff had hopes of selling the cars before August, and asked to be kept on if he agreed to forego his commission. This was agreed to, but the dismissal was due to the plaintiff using the trade plates for pleasure purposes. Although the defendant had paid the plaintiff a week's wages on dismissal, this did not imply any waiver of the right to dismiss him summarily, and was not a renewal of the contract entitling the plaintiff to a month's wages. His Honour Judge Donald Hurst gave judgment for the plaintiff for £24, with costs, in respect of wages in lieu of notice, but disallowed the claim for commission.

LIABILITY OF DEFUNCT FOOTBALL CLUB.

In *Tye* v. *Crosby and Others*, recently heard at Stowmarket County Court, the claim was for £32 11s. 2d. against seven members of the Stowmarket Football Club. The plaintiff's case was that his motor omnibus had been hired, on behalf of the club, and the orders were given by the first defendant, who had paid previous accounts by cash and cheques. The first defendant's case was that the cheques had been signed by the club treasurers in previous years and he, himself, had ordered the buses on the instructions of the committee. Another defendant contended that he was only responsible for the reserve team whose omnibus account had been paid. His Honour Judge Hildesley, K.C., pointed out that this sub-division of the work was only for convenience and that the reserve team was not a separate organisation from the rest of the club. A third defendant contended that the committee had had no chance to pay owing to the formation of a new club—Stowmarket United. Had that club not been formed the original club would still be in existence. A fourth defendant pointed out that there were other members of the committee who were equally liable and should have been sued. It was held that the committee were responsible for the debts of the club. If there were other members of the committee they might have been brought into the action by the appropriate procedure at the instance of those actually sued by the plaintiff. The latter was entitled to judgment against the seven defendants for the amounts claimed, with costs. After paying the money, the seven defendants could claim contribution from the others, whom they suggested were equally liable.

ESTATE AGENTS' COMMISSION.

In *Robt. Frost & Son* v. *Turpin*, recently heard at Newton Abbot County Court, the claim was for £57 10s. as commission on the sale of a house. The latter was put into the plaintiffs' hands in 1936 and in May, 1939, they showed a Mr. Cozens over the property. The sale price was £2,500 but, as Mr. Cozens wished to rent a house, the matter was not pursued. A reduction of the purchase price to £2,250 was, however, intimated to Mr. Cozens by a letter from the plaintiffs Subsequently it transpired that Mr. Cozens had bought the property through another firm of estate agents. Although the other firm's commission had been paid by the defendant, this did not deprive the plaintiffs of their right to commission as they had originally introduced the purchaser to the premises. The defence was that the plaintiffs had not been responsible for the signature of any preliminary contract for the purchase. When the defendant heard that both firms were endeavouring to sell the house, he informed them that the one who got the signature should receive the commission. His Honour Judge Thesiger observed that the plaintiffs were not given an opportunity of following up their introduction of the property. It was unfortunate that the two firms had not made some arrangement and also unfortunate for the defendant that he had already paid one commission. Judgment was given for the plaintiffs, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

SEAMAN'S FALL INTO HOLD.

In *Peterson* v. *Union Castle Steamship Co., Ltd.*, at Sunderland County Court, the applicant was a seaman, and, on the 21st July, 1939, while on board the s.s. "Llandovery Castle," at Southampton, he had fallen into the hold and sustained spinal and leg injuries. His case was that his fall into the hold was due to a canvas hatch tent not being properly secured, and an award was claimed of 30s. a week during total incapacity. The respondents' case was that the accident had not arisen out of and in the course of the employment, as the applicant must have lifted a portion of the hatch tent and fallen from the ladder, after having gone into the hatch for an ulterior purpose, e.g., pilfering. His Honour Judge Richardson made an award as asked, with costs.

TERMINATION OF INCAPACITY BY OPERATION.

In *Evans* v. *Allen*, at Shrewsbury County Court, the applicant had been employed as a domestic servant. On the 8th July, 1938, the applicant had been trying to retrieve a duster, and had fallen through a glass roof. She was left-handed, and the ring finger of that hand had been rendered useless by cuts sustained in the accident. The latter was alleged by the respondent not to have arisen out of and in the course of the employment, as the applicant had been forbidden to go upon the glass roof. His Honour Judge Samuel, K.C., held that the applicant was entitled to an award. On a pre-accident remuneration of £1 a week, compensation was awarded at 15s. a week as from the 1st July, 1938. The medical evidence was, however, that the finger should be removed, and therefore the respondent could at any time allege that the applicant should undergo an operation. If she were so advised by her doctors, but unreasonably refused, the respondent could apply for termination of the compensation, on the ground that the incapacity was no longer due to the accident.

INJURY TO HIP.

In *Johnson* v. *Lougher*, at Craven Arms County Court, the applicant's case was that, on the 5th February, 1934, he had been in charge of the respondent's horse and cart on the highway. Owing to a collision, the horse fell upon the applicant, who sustained an injured thigh. The applicant's wages had been 32s. 6d. a week, and he was paid compensation at the rate of £1 1s. 1d. a week until the 17th March. Having undergone an operation the applicant was in hospital until March, 1938. The medical evidence was that there was an overgrowth of bone in the hip, but this condition had been aggravated by the accident. His Honour Judge Samuel, K.C., made an award of £1 7s. as from the date of the accident, credit to be given for the amounts already paid. It transpired that the respondent had gone abroad, so that the applicant's chances of obtaining the money were problematical.

To-day and Yesterday.

Legal Calendar.

8 April.—The 8th April, 1922, was a memorable day for the Pegasus Club. That year Bench and Bar assembled for the racing near Edenbridge, the course having been marked out at Crouch House Farm. For the first time a High Court judge took part in one of the events. It was Mr. Justice Roche who thus broke with tradition, riding his mare "Nancy" in the heavyweight race. At the water-jump the spectators witnessed the unusual spectacle of two county court judges and a judge of the King's Bench Division hustling their horses out of the water together.

9 April.—On the 9th April, 1882, the trial of the Phœnix Park murderers opened in Dublin before Mr. Justice O'Brien. The first man in the dock was Joe Brady, a twenty-eight year old stonemason, of great size and immense strength. It was his hand that had done the deed that had horrified the whole of the British Isles—the stabbing in broad daylight of Lord Frederick Cavendish, Chief Secretary for Ireland, and Mr. Thomas Burke, Permanent Under-Secretary, in pursuance of a plot by a murder gang, called the Irish Invincibles. Convicted on the evidence of one of their number, five of them were hanged.

10 April.—On the 10th April, 1894, Lord Bowen died at the age of fifty-nine, leaving in the legal world the memory of a unique personality.

11 April.—In 1733 South Carolina was in a state of some confusion. Mr. St. John, the Surveyor-General and Deputy Auditor of the Province, was in custody, and Mr. Cooper, one of the Assistant Judges, together with most of the gentlemen of the law, had been committed for trying to obtain writs of *habeas corpus* to inquire into the legality of his detention. An Act was then passed in the Province to prevent suits and disturbances of the judges and magistrates, its object being to indemnify them from the penalties incurred for denying the grant of such writs or refusing to obey them. On the 11th April, 1734, after a petition from South Carolina had been heard before the Privy Council, His Majesty repealed the Act.

12 April.—When Richard Coleman was hanged on Kennington Common on the 12th April, 1749, he died an innocent man. He had been convicted of being a party to the murder of a girl called Sarah Green, who had been assaulted by three men one night in Newington Church Walk and so brutally treated that she had died. Two years later in the course of an argument whether anyone had ever been wrongfully hanged, one of the real criminals was indiscreet enough to cite Coleman as an example. The authorities got on their tracks and two of them were executed on the evidence of the third.

13 April.—On Sunday, the 13th April, 1662, Pepys saw an odd happening in the Temple Church. He wrote: "In the morning to Paul's where I heard a pretty good sermon and thence to dinner with my Lady . . . After much talk with her I went to the Temple Church and there heard another. By the same tokens a boy being asleep fell down a high seat to the ground ready to break his neck but got no hurt. Thence to Gray's Inn Walks."

14 April.—Elizabeth Chudleigh, otherwise Countess of Bristol, otherwise Duchess of Kingston, is one of the more picturesque figures in our social history. Having secretly married the heir to an earldom she afterwards found it convenient, by the machinery of a jactitation suit collusively arranged, to obtain a declaration that she was not his wife. Then she married a duke and in 1776, after he had died, leaving her his immense fortune, the House of Lords found her guilty of bigamy. The will was assailed in the courts of law, but on the 14th April, 1780, the Court of King's Bench held that it could not be upset.

The Week's Personality.

The rare charm of Lord Bowen's personality has left behind a memory unique in legal history. The title seems out of place in connection with his name. He was positively boyish when he was raised to the Bench and despite ill-health he remained unchangingly youthful to the end. His brilliant temperament had many sides—"sweet, joyous, affectionate, instinct with natural gaiety, but crossed with sombre strains of thought and a melancholy mood. Conscious of great powers which a continued series of successes forbade him to forget and fired with the ambition to play the part in life for which he felt the capacity, he was haunted throughout with the misgivings which are the heritage of thoughtful natures—misgivings as to the scope and limitations of human existence and the real value of the prizes which life offers. He was haunted too by sentiments and motives alien to the sterner stuff of which ambition should be made—delicate consideration for others—courtesy, the outcome of a generous soul—nicety of moral judgment, a fastidious taste." Nearly fifty years after his death, his wit, light and delicate, is still remembered. He bore the sufferings of his last illness with serenity, fortitude and resignation, and when he was gone his friends were conscious how much brightness and sweetness had vanished from their lives.

Lord Cochrane's Career.

A retrospective extract from the *Morning Post* in 1820, published lately in *The Daily Telegraph*, gives an account of Lord Cochrane's exploits in command of the Chilean Navy while he was preparing to capture Lima. Probably no English sailor since Drake battled so brilliantly against the Spaniards, yet he fought as an exile in disgrace, convicted six years before of conspiring to defraud the public. It was a strange and, as was afterwards realised, an undeserved fate which had thus overtaken one of the most daring heroes of the Napoleonic wars. His first command was the "Speedy," a 14-gun brig in which he harried the Spanish coast, capturing fifty ships including a frigate which he carried by boarding—fifty men against six hundred. But he was too much of an individualist for his own good. His open criticisms of naval abuses estranged the Admiralty, which relegated him to long periods of inactivity. His successful attack on the French fleet in the Basque Roads in 1809 made him a Knight of the Bath, but his subsequent attack on Lord Gambier, his superior, for not supporting him vigorously enough, kept him unemployed on half-pay for several years.

A Sensational Trial.

Therefore, the Admiralty were delighted when in 1814 he became implicated in a financial scandal of national importance. On the 21st February a rumour was spread that Napoleon had been killed. The stocks rose sharply and those who sold their holdings before the truth came out made large profits. Lord Cochrane's uncle was among them. He himself was involved in speculation, but as his broker had had standing orders to sell on a rise of one point he made less than the others. Investigation revealed that the report had been spread by a man in military uniform driving in a post-chaise from Dover to Winchester and London, and that he had afterwards been seen at Lord Cochrane's house in Green Street. His name was de Beranger, and Lord Cochrane said he had only come to ask for employment in the ship he was then fitting out. There was much conflict as to whether he was wearing the green uniform of a rifle volunteer officer, to which he was entitled, or an elaborate red affair to which he obviously had no right. Tried for conspiracy to defraud, de Beranger, Cochrane, his uncle and five others were convicted. Cochrane was sentenced to fine, imprisonment and the pillory, though this last was remitted. He lost, of course, his honours and his employment, and it was thirty years before he was fully reinstated.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Post-1925 Intestacy—Children of Brothers and Sisters Taking—Whether per stirpes or per capita.

Q. 3684. We should be glad if you will kindly favour us with your opinion on the following point on the Administration of Estates Act, 1925, and the statutory trusts of residue therein mentioned. A widow dies intestate, without issue or parent or brothers and sisters, leaving only the children of brothers and sisters, i.e., nephews and nieces. Do such nephews and nieces take *per capita* or *per stirpes?* Our view is that as there is no brother or sister living in the class now being ascertained, all the nephews and nieces take equally, i.e., *per capita*, and not *per stirpes*, but had there been a brother or sister living, and nephews and nieces of a deceased brother and sister, then such living brother or sister would have taken one-third share *per capita*, and the nephews and nieces the other two-thirds *per stirpes* as representing their respective deceased parents.

A. We regret that we are unable to accept our subscribers' view as correct. The " stocks " here are the several brothers and sisters who predeceased the intestate, leaving children who survived her (A. of E.A., 1925, s. 46 (1) (v) (first), and the residue must be held for all the children living at her death who attain the age of twenty-one years or marry under that age of those brothers and sisters, such children to take according to their stocks and in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate. We see no reason to suppose that the words " their parent would have taken " in A. of E.A., 1925, s. 47 (1) (i) are limited in the way suggested to a case where one of the actual stocks takes a share, the remaining shares being taken by issue of the remaining stocks (see A. of E.A., 1925, s. 47 (3) and s. 47 (1) (i)).

Expenditure on Improvements.

Q. 3685. A landlord of controlled cottages carried out certain admitted improvements and served notice on his tenants increasing the rent by 8 per cent. The tenants consider the sums on which the 8 per cent. is calculated excessive. Requests for particulars and detailed information relating to the expenditure have been met with a refusal to supply more than a general statement. Further, the work done is charged in one lump sum and the landlord is unable to give details of expenditure on each cottage. An architect has advised that the alleged cost of the improvements is excessive. What steps should the tenants take to get a fair increase in their rent charged ?

A. The tenants should apply to the county court under the Increase of Rent, etc., Act, 1920, s. 2 (1), for an order reducing the increase on the ground that such expenditure was unnecessary. It is only necessary to prove that the *expenditure* was unnecessary. It may therefore be conceded that the improvements were necessary, but this still enables the tenants to contend that the expenditure should be reduced ; in other words, that the work could have been done for less money.

Maintenance of Shrubs.

Q. 3686. The tenant of a house and garden in his lease has covenanted to keep the garden and all shrubs and bushes in good order and condition and to replace any shrubs or bushes which may perish. Owing to several shrubs and bushes having previously been planted too close together in one place some of them have died; also, owing to exceptionally cold winters for the last two years such as we have not had in this mild part for ten years, certain other semi-tropical flowering shrubs have also died. Is the tenant liable under his covenant to replace the shrubs which have died in both the above cases ? In the first case, the tenant claims that it was the landlord's fault and, in the second case, that he is exempt on account of the exceptionally severe weather. The landlord is a very difficult person to deal with and the question of principle for future guidance is involved.

A. The covenant to " replace any shrubs or bushes which may perish " is unqualified in any way. The obligation to replace is absolute, as there is no proviso corresponding, for example, to the exception of " fair wear and tear " in a repairing covenant. The question is therefore answered in the affirmative. No exemption is conferred upon this tenant, either by the shrubs being planted too close together by the landlord, or by the fact that the abnormal weather has destroyed some of the shrubs.

Recovery of Rates.

Q. 3687. Where the landlord of premises is unable to pay the rates due on those premises owing to conditions that have arisen since the war, do the provisions of the Courts (Emergency Powers) Act, 1939, prevent the rating authority from collecting the rates over the head of the landlord direct from the landlord's tenants ? We are of opinion that such a procedure does not fall under the heading of " distress."

A. The querists are correct in their opinion that the procedure does not fall under the heading of distress. It is analogous to garnishee procedure, but, as the remedy is exercised under the Rating and Valuation Act, 1925, s. 15 (1), it does not involve the enforcement of the judgment of any court. The rating authority are therefore not precluded from exercising the remedy by the Courts (Emergency Powers) Act, 1939, s. 1 (1) or (2).

Rent Acts — Owner in Occupation — Whether Recontrolled.

Q. 3688. As a subscriber, I shall be obliged if you will please answer the following question : Can the owner of premises who is in occupation at the date of the commencement of the Act let them at any rent he wishes ?

A. The owner of premises who is in occupation at the date of the commencement of the Act cannot let them at any rent he wishes if the premises are recontrolled by the Act. Whether they are recontrolled depends on ss. 3 and 7, which control all dwelling-houses of which the rateable value on the appropriate day did not exceed in London £100, in Scotland £90, or elsewhere £75, the appropriate day for London being 6th April, 1939, and elsewhere 1st April, 1939. Any premises so controlled may only be let at a rent equal to the standard rent and the permitted increase. If the premises were controlled immediately before the commencement of the Act, the determination of " standard rent " is governed by s. 12 (1) (*a*) of the 1920 Act, but if the premises are brought into control by the 1939 Act, the definition of standard rent is modified by s. 3 (1) and the First Schedule. Moreover, the effect of s. 3 of the 1938 Act and s. 2 of the 1939 Act is to remove all provision allowing for decontrol on vacant possession by the landlord, so that the fact that the landlord is in possession is not material.

Notes of Cases.

Court of Appeal.

Oscar Harris, Son & Co. *v.* Vallarman & Co.

Slesser, MacKinnon and Goddard, L.JJ.
12th January, 1940.

PRACTICE—PLEADING—CLAIM ON BILLS OF EXCHANGE—DEFENCE OF SET-OFF PLEADED BY ACCEPTORS ON ALLEGATION OF DEFECTIVE GOODS—WHETHER VALID.

Appeal from a decision of Hallett, J., in Chambers.

The plaintiffs, Oscar Harris, Son & Co., according to the evidence agents of Simplex Cloth Cutting Machine Company, Incorporated, of New York, sued the defendants, Vallarman and Co., as acceptors of eight foreign bills of exchange for a total sum of £995 0s. 6d. drawn at New York on the defendants and payable in London. The claim was made by specially indorsed writ by the plaintiffs as holders of the bills. The defendants by their amended defence pleaded, *inter alia*, that the bills were accepted by them in payment of certain machines supplied by the Simplex Company, and that those machines did not comply with their description and were not of merchantable quality. They further claimed that, if the plaintiffs were entitled to recover on the bills, they (the defendants) were entitled to set off so much of the loss or damage sustained by them by reason of the defects in the machines as would extinguish the plaintiffs' claim. The plaintiffs applied for an order striking out from the defendants' amended defence the above pleas on the ground that they disclosed no defence to the action. Master Ball dismissed the application. On appeal, Hallett, J., reversed that decision and ordered the pleas to be struck out, under R.S.C., Ord. XXV, r. 4, as showing no reasonable answer. The defendants now appealed.

SLESSER, L.J., said that it would in his opinion be improper at that stage to preclude the defendants, by striking out the paragraphs, from claiming their right to set-off in respect of the loss and damage suffered, as they alleged, by the defects of the machinery to the extent of so much as they could show to be the proper subject of claim for loss and damage. It was true that the earlier cases seemed to support the view that in such a case, under the old rules of pleading before the Judicature Act, it would be necessary to bring a cross-action, as, for example, *Warwick* v. *Nairn*, 10 Ex. 762. The matter had last been mentioned in the Privy Council in *Bow, McLachlan & Co., Ltd.* v. *Ship "Camosun"* [1909] A.C. 597, at p. 611, where it was stated it seemed clear that the change was made, not upon any principle of law, but upon grounds of convenience, in order to prevent circuity of action. Before the statutes of set-off it was necessary to bring cross-actions in respect of debts on the one side and on the other, and, except in certain cases, no change was, as a matter of strict law, made with regard to unliquidated damages until the Judicature Acts. It was stated in "Chalmers on Bills of Exchange" (10th ed., p. 118) that partial failure of consideration was a defence *pro tanto* against the immediate party when the failure was an ascertained and liquidated amount, but not otherwise. It was not a defence against a remote party who was a holder for value. Here, on the evidence as it now stood, it appeared that the plaintiffs were mere agents for the American company which supplied the machines. Assuming that the allegations in the defence as to the quality of the machines were true, in the present state of the law since the Judicature Act, it was, at any rate, very arguable that the defendants might claim as a reduction of the liability under the bills their loss or damage by way of set-off as mentioned in the defence. And, still on that assumption, it was quite impossible to say that such a statement did not disclose any reasonable answer. The judge was wrong and the appeal should be allowed.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Harold Simmons*; *Lowe* (for *Harold Brown*, on war service).

SOLICITORS: *Janus Cohen & Co.*; *Keen, Rogers & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parry *v.* The Aluminium Corporation, Ltd.

Slesser, MacKinnon and Goddard, L.JJ.
18th January, 1940.

FACTORY—DANGEROUS MACHINE—NEGLIGENTLY SET IN MOTION BY EMPLOYEE—INJURY TO PLAINTIFF EMPLOYEE—NOT CONTRIBUTORY NEGLIGENCE—PRACTICE—SUBMISSION OF NO CASE—DEFENDANTS TO BE ASKED WHETHER CALLING EVIDENCE.

Appeal from a decision of Stable, J.

The plaintiff was employed by the defendant company to work a machine for cutting aluminium plates. In front of the movable knife was a guard beneath which a man could put his hand. Two men worked the machine which could be set in motion by either with a separate pedal. The machine being at rest, the plaintiff, whose fellow-workman was absent, had for purposes of measuring a plate occasion to place his hand beneath the guard, and, while he was so engaged, another employee of the defendants, who was not employed to work the machine but wished to use it for a purpose of his own, negligently set it in motion, with the result that three of the plaintiff's fingers were severed. The plaintiff then brought this action against the defendants for breach of their statutory duty under s. 10 (1) (*c*) of the Factory and Workshop Act, 1901, to see that the machine was properly fenced. The defendants contended *inter alia* that the plaintiff had been guilty of contributory negligence. Evidence was given to show that the machine was dangerous and not securely fenced. Cross-examined about having put his hand under the guard, the plaintiff admitted that he had never done so foolish a thing before. At the end of the plaintiff's case, counsel for the defendants made a submission of no case to answer, contending that that reply in cross-examination amounted to an admission of contributory negligence. The judge accepted the submission and gave judgment for the defendants without their having called, or asked to call, any evidence. The plaintiff now appealed.

SLESSER, L.J., said that the authorities established that contributory negligence might be set up as a defence to an action for breach of statutory duty. Here the judge had, however, misdirected himself through failing to notice all the circumstances of the case. The machine was at rest while the plaintiff was working with the plate, and his fellow-workman was absent. A third employee, not noticing where the plaintiff's hand was, started the machine, and it was that third person's negligence which contributed to the plaintiff's injury, not the negligence of the plaintiff himself. The question whether the plaintiff had or had not done a reasonable thing with the plate was not to be decided on the plaintiff's answer in cross-examination. There must be a new trial limited to the question of damages.

MACKINNON, L.J., agreed.

GODDARD, L.J., also agreeing, said that no one could say that the machine was not dangerous. It was obvious, also, that it was not securely fenced; and it would not be right in any event to send the case back for a new trial which enabled the defendants to raise the question of secure fencing when they had already taken their chance on that matter. In all these cases of negligence, if a judge were asked to rule that there was no case to answer, it was desirable that he should adopt what he (his lordship) had always understood to be the right practice—namely, that counsel submitting no case should be asked if he elected to call no evidence. It was undesirable that a judge should give a ruling which might be reversed by the Court of Appeal and that the defendant should then be in a position to demand a new trial because his evidence had not been heard. In cases of

negligence the right course was for the judge to refuse to rule unless counsel for the defendant intimated that he intended calling no evidence. It was not the right course in all cases, because the judge was bound to rule in libel cases where it was submitted that there was no evidence of malice, and in slander cases where it was submitted that the words complained of were not actionable without proof of special damage.

COUNSEL: *Shawcross*, K.C., and *Blackledge; Hemmerde*, K.C., and *McFarland*.

SOLICITORS: *Helder, Roberts & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool; *W. P. Ellen*, for *Peace and Darlington*, Liverpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mills *v.* Mills.

Sir Wilfrid Greene, M.R., and Goddard, L.J. 19th March, 1940.

DIVORCE—ORDER FOR MAINTENANCE—ORDER DISCHARGED ON PAYMENT OF LUMP SUM—"MATTER NOT TO BE REOPENED WITHOUT LEAVE OF COURT"—SUBSEQUENT APPLICATION FOR LEAVE TO APPLY FOR MAINTENANCE—JURISDICTION OF COURT—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 190.

Appeal from order made by Bucknill, J.

The respondent to the appeal, the wife, obtained a decree *nisi* of divorce in May, 1932. The decree was made absolute in November, 1932, and in December, 1932, she filed a petition for maintenance and an order for maintenance was made. In the summer of 1933 the husband fell into arrears in payment of the maintenance, and in October of that year an order was made by consent that the husband should pay the wife a sum of £1,250 in satisfaction of all sums then or at any time thereafter payable for maintenance, and that the order for maintenance should be discharged and the petition dismissed. That order concluded with the words: "This matter not to be reopened without the leave of the court." The sum of £1,250 was duly paid. On 31st January, 1940, the wife took out a summons that the husband should show cause why she should not have liberty to apply for maintenance. Bucknill, J., gave her leave to file an application for that purpose. The husband appealed on the ground that the court had no jurisdiction to make a further order for maintenance.

Sir WILFRID GREENE, M.R., allowing the appeal, said that if the application had been a new application the court would clearly not have jurisdiction because it would not have been made "on the decree for divorce" within s. 190 of the Supreme Court of Judicature Act, 1925. It must therefore be treated as referable to the previous proceedings. But by the order of October, 1933, the then existing order for maintenance was discharged and the maintenance petition dismissed. It was suggested that that order was one which the court had no jurisdiction to make because it deprived the court of the statutory power of varying the maintenance order and because the law did not allow the wife by bargaining to deprive the court of such power. That was an argument which he could not accept. The result was that the order for maintenance and the petition for maintenance were gone and there was no peg on which to hang the present application. The effect of that conclusion was that the words at the end of the order of October, 1933: "This matter not to be reopened without the leave of the court," ought never to have been inserted in that order and should not be inserted in such orders in future. He also thought that it was not desirable that the court should include in such an order a direction for the payment of a lump sum where the court would have no jurisdiction itself to order the payment of such a sum. In the result the appeal succeeded.

GODDARD, L.J., agreed.

COUNSEL: *Sir William Jowitt*, K.C., *H. W. Barnard*, K.C., and *P. R. Hollis* (for *Karminski*, on war service); *Melford Stevenson*.

SOLICITORS: *Gordon, Dadds & Co.; Withers & Co.*

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Seviour *v.* Somerset Collieries, Ltd.

Slesser, Luxmoore and Goddard, L.JJ.
16th February, 1940.

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF AND IN COURSE OF EMPLOYMENT—WORKMAN ACTING IN CONTRAVENTION OF STATUTE AND OF EMPLOYERS' ORDERS—MINER RIDING IN TUB—RIGHT TO COMPENSATION—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 1 (2).

Appeal from decision of Judge Jenkins at Frome County Court.

The appellant, who was employed in a coal mine as a carting boy at the coal face, was injured, as the county court judge found, while he was riding in a tub along the haulage road in contravention of s. 43 (2) of the Coal Mines Act, 1911, and in disobedience to his employers' orders. He claimed compensation from his employers under the Workmen's Compensation Act, 1925. By s. 1 (2) of that Act: "For the purposes of this Act, an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business." The county court judge dismissed the workman's claim. The workman appealed.

SLESSER, L.J., allowing the appeal, said that the question how far a prohibition as such could be looked at to see whether it affected the scope of the workman's employment was considered in *Thomas* v. *Ocean Coal Co., Ltd.* [1933] A.C. 100, the decisions in which in the House of Lords had guided the Court of Appeal ever since in the determination of that difficult matter. The conclusion in that case seemed to be that once it was shown that the act was within the sphere of the employment, the mere fact that it was prohibited as such would not take it outside the sphere of the employment, although there might be some prohibitions which in their nature were such as to indicate the limitations of the sphere of employment. In *Harris* v. *Associated Portland Cement Manufacturers, Ltd.* [1939] A.C. 71, at p. 77, Lord Atkin, speaking of the doctrine of added perils, said that the test was whether the perils were those which the workman in fact encountered while doing the work which he was employed to do. Finally, in *Victoria Spinning Co. (Rochdale), Ltd.* v. *Matthews*, 52 T.L.R. 708, at p. 709, Lord Russell said that it was no longer open to the courts to hold that, because the contravention by the workman added a peril to the employment, the accident did not arise out of and in the course of the employment. In the present case the question was whether there was any evidence that the act of the workman was not within the sphere of the employment. The fact that it was reckless and that the workman knew it to be forbidden was no ground for holding that it was outside the sphere of his employment. There was no evidence that the appellant's contract of employment excluded from the scope of his employment the act of travelling along the haulage roads in a tub, other than the fact that it was forbidden. The court had power to draw inferences of fact, and the necessary inference in the present case was that the act of the workman was done in connection with the employers' business. The conclusion followed that, being within the sphere of the employment, the matter was covered by s. 1 (2) of the Act and the appeal succeeded.

LUXMOORE and GODDARD, L.JJ., agreed.

COUNSEL: *Malcolm McGougan; F. W. Beney*.

SOLICITORS: *A. Taylor & Co.*, for *Titley, Long, Taylor and Denning*, Bath; *Bramall & Bramall*, for *F. E. Metcalfe*, Bristol.

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

Brown *v.* Sherwood Colliery Co., Ltd.

Slesser, Luxmoore and Goddard, L.JJ.
28th February, 1940.

WORKMEN'S COMPENSATION—APPLICATION FOR REFERENCE TO MEDICAL REFEREE—ORDER OF REGISTRAR—APPEAL TO JUDGE—WHETHER FINAL OR INTERLOCUTORY—COSTS—WORKMEN'S COMPENSATION ACT, 1906 (6 Edw. 7, c. 58), Sched. I, para. (15)—WORKMEN'S COMPENSATION RULES, 1913–1924, r. 57.

Appeal from decision of Judge Hildyard at Mansfield County Court.

A workman in 1939 suffered from a pain in his back, which he thought was caused by an accident which he had had in 1917, and in respect of which he had for a time received compensation. He asked the employers to agree to refer the matter to a medical referee, but that request was refused. The workman was then examined by his own doctor and afterwards applied to the county court registrar for a reference to a medical referee under para. (15) of Sched. I to the Workmen's Compensation Act, 1906 (which was applicable by reason of the fact that the accident happened before 1924). The registrar made an order for a reference and an appeal by the employers to the judge was dismissed, with costs. The registrar taxed the costs of the appeal on the basis that the judge's order was a final order, and on an application by the employers for a review on the ground that the registrar ought to have taxed the costs on the basis that the order was an interlocutory one the judge held that it was a final order. The employers appealed. By para. (9) of r. 57 of the Workmen's Compensation Rules, 1913–1924: "The costs of any application to the Registrar . . . may be allowed by special order of the judge on application in that behalf, such application to be made on not less than four days' notice in writing and in accordance with the provisions of Order XII, rule 11 [of the County Court Rules, 1903–1922], so far as applicable." Order XII of the County Court Rules, 1903–1922, related to practice on interlocutory applications.

SLESSER, L.J., allowing the appeal, said that although it was necessary to consider the case under the Act of 1906, as amended by the Act of 1923, the result would, in his view, have been the same if the case had been brought under ss. 17–19 of the Act of 1925 and the Workmen's Compensation Rules, 1926. Dealing with the special rules applicable to the case, it was clear that applications to the registrar were deemed to be interlocutory and by a parity of reasoning an appeal to the judge from such proceedings must also be interlocutory. But he did not come to that conclusion solely on a consideration of the particular rules. The order of the registrar or judge, deciding whether or not there should be a reference, merely determined the manner in which the medical evidence should be adduced—whether by a certificate of the medical referee, or, if the reference was refused, by oral testimony. It did not finally determine the rights between the parties as to the liability to pay compensation. Had the judge refused to order a reference, it could hardly have been argued that the order was not interlocutory, and the fact that the judge allowed the reference could not make the order a final one. In the present case, therefore, the costs should be taxed on the basis that the order of the judge dismissing the appeal and the order of the registrar on the application for a reference were interlocutory orders. The appeal succeeded.

LUXMOORE and GODDARD, L.JJ., delivered judgments agreeing that the appeal should be allowed.

COUNSEL: *F. W. Beney; F. A. Sellers*, K.C., and *N. Winning*.

SOLICITORS: *Barlow, Lyde & Gilbert*, for *Eking, Manning, Morris & Foster*, Nottingham; *Taylor, Jelf & Co.*, for *Hopkin & Son*, Mansfield.

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

Toogood *v.* Wright.

Slesser and Clauson, L.JJ., Singleton, J.
5th April, 1940.

DAMAGES — DOG BITE — NO SCIENTER — NEGLIGENCE — ALLEGED DUTY TO CONTROL—GREYHOUND—DOMESTIC ANIMAL—NO PECULIAR DANGEROUS PROPENSITY.

Appeal from Kingston-upon-Hull County Court.

The plaintiff had claimed damages for personal injuries which she had suffered as a result of being bitten by one of the defendant's two greyhounds, and further claimed £5, the value of her cat which had been killed by one or other of the greyhounds. There was some evidence of scienter, and the negligence alleged had been that the defendant had failed to keep the greyhounds under proper control, in breach of his duty to do so, having regard to the fact that greyhounds of that type were trained to race after furry animals and must be expected to chase one if they met it when they went out. The facts were that on 18th September, 1939, the defendant sent out two racing greyhounds which belonged to him, under the charge of two boys of ten and twelve years of age. The boys were not able to control the dogs should they desire to get away. The dogs broke away on seeing the plaintiff's cat, and chased it into a path adjoining the plaintiff's house and killed it. When the plaintiff tried to rescue the cat she was bitten in the thigh by one of the dogs. The learned county court judge held (1) that he was not satisfied that the defendant knew that the dogs were of a fierce or mischievous disposition, or had a propensity to bite mankind or cats; (2) that the defendant was not guilty of negligence in permitting the boys to take the dogs out; (3) if he were wrong in holding that the defendant was not negligent, that the defendant could not have been expected to foresee that the dogs would bite a human being in consequence of his negligence and that it was not the natural and probable consequence of leaving the dogs uncontrolled that they would chase a cat, catch it, and bite a human being who tried to rescue it. The learned county court judge entered judgment for the defendant. The plaintiff appealed.

SLESSER, L.J., dismissing the appeal, said that there was no appeal against the finding that the evidence failed to satisfy the judge that to the defendant's knowledge the dogs were of a fierce or mischievous disposition or had a propensity to bite mankind or cats. With regard to the argument that greyhounds, although domestic animals, were prone to chase cats and the defendant must be taken to have known this and that anyone who tried to rescue a cat from a greyhound would be bitten, his lordship pointed out that the learned county court judge had found that there were no special circumstances imposing a special duty on the defendant as having a particularly dangerous thing under his control to maintain proper control. He had declined to hold that the fact that racing greyhounds might chase cats constituted any peculiar danger which should have been anticipated, and which would not also apply to other types of dogs, which would equally chase cats and bite anyone who tried to rescue them. The appellant's argument, if successful, might well have led to the compulsory imprisonment of a large portion of the canine race.

CLAUSON, L.J., and SINGLETON, J., agreed.

COUNSEL: *G. H. B. Streatfeild*, K.C., and *Withers Payne*, for appellant; no appearance by respondent.

SOLICITORS: *Russell, Jones & Co.*, for *Pearlman & Rosen*, Hull.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Henderson ; Public Trustee *v.* Reddie and Others.

Morton, J. 22nd February, 1940.

APPORTIONMENT—LIFE INTEREST IN SETTLED FUND—DEATH OF TENANT FOR LIFE—PART OF SETTLED FUND APPROPRIATED CUM-DIVIDEND TO NEW TRUSTS—RIGHT OF PERSONAL REPRESENTATIVES TO HAVE DIVIDENDS APPORTIONED—APPORTIONMENT ACT, 1870 (33 & 34 Vict., c. 35), ss. 2, 3, 5.

The testator, who died in 1933, by cl. 11 of his will, directed his trustees to raise out of his residuary estate the sum of £150,000 and to invest the same in trustee investments and to pay the income thereof to the tenant for life during her life, and after her death to raise out of such fund the clear sum of £100,000, to be held upon trust to apply the income as an endowment fund for the upkeep of a convalescent home which the testator was founding. The testator gave the residue of his estate upon trust for a number of charities. The sum of £150,000 was duly invested in trustee investments, and the income received by the trustees up to the death of the tenant for life was paid to her. She died on the 6th July, 1939, having appointed the first defendants to be executors and trustees of her will. On the 25th July, 1939, the plaintiff and his co-trustee appropriated certain of the investments representing the £150,000, to answer the £100,000 endowment fund which had to be raised under cl. 11 of the will. After the date of appropriation the trustees received certain interest on the appropriated investments in respect of a period beginning before the death of the tenant for life and ending after her death. The personal representatives of the tenant for life contended that they were entitled to be paid the part of this interest apportioned to her death. This summons was taken out by the Public Trustee, as one of the trustees of the will, to determine the question whether interest accrued up to the date of the death of the tenant for life on the investments which had been appropriated to the endowment fund ought to be paid to her personal representatives. Section 2 of the Apportionment Act, 1870, provides that " . . . all rents, annuities, dividends and other periodical payments in the nature of income . . . shall like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

MORTON, J., said there can be no doubt that the sums received as interest, whether they came more aptly under the description of " dividends " or of " other periodical payments in the nature of income," fell within s. 2 of the Apportionment Act, 1870. In *In re Muirhead* [1916] 2 Ch. 181, Eve, J., said : " In my opinion, whenever there are periodical payments accruing when the event calling for apportionment occurs, the Act is at once brought into operation and must be applied." With that observation he agreed. In the present case the investments in respect whereof the interest was paid were still in the hands of the trustees. Unless the appropriation defeated the rights of the legal personal representatives of the tenant for life, they were entitled to the portion of the interest which accrued in her lifetime. In his judgment the appropriation could not defeat such rights. Having reached this decision on the wording of the Apportionment Act, 1870, he had to consider whether there was any authority which led to a different conclusion. Recent decisions had raised some doubts on this matter. He therefore proposed to deal generally with the position. He would assume that A B was entitled, under a will, to receive during his life the income of a trust fund, consisting of a number of investments. At his death a dividend, as defined in the Apportionment Act, 1870, was accruing on each of these investments. At the date when such dividend was paid the trustees might still retain the investments in respect whereof it was paid or they might have parted with it in various circumstances. He would take three cases. Case A, the trustees still retained the investments. If they received a dividend a portion of it belonged to the estate of A B. Case B, the investment had been transferred to a person absolutely entitled under the will or divided amongst a number of persons so entitled. In his view the trustees ought not to have so transferred the investment without making some arrangement to ensure that the legal personal representatives of A B would be able to obtain payment of the proper apportioned part of the dividend. If the trustees had transferred the investment in question before the dividend became due and payable to some person or persons absolutely entitled to the capital, without making any arrangement as to the apportioned part of the dividend, the right of the legal personal representatives of the tenant for life would not be defeated. The transferees claimed under the same will which directed payment of the income to A B during his life. They had received a dividend, a portion whereof belonged to the estate of A B ; they were bound to pay it over to his legal personal representatives. If, however, the trustees procured a valuation of an investment with a view to its appropriation in satisfaction or part satisfaction of a share in the trust fund, the valuation should take into account the fact that no such appropriation could defeat the claim of the legal personal representatives of A B to an apportioned part of the dividend. His lordship then referred to Stirling, J.'s judgment in *Bulkeley* v. *Stephens* [1896] 2 Ch. 241, and said that it showed that A B's personal representatives would be entitled to an apportioned part of the dividend and that this right would not be defeated by any transfer to persons entitled to capital. Farwell, J.'s decision in *In re Firth* ; *Sykes* v. *Hall* [1938] Ch. 517 ; 82 SOL. J. 332, raised a doubt on the matter, but he was satisfied that the learned judge there was only directing his mind to investments which had been sold and not to the case of investments which had been appropriated cum-dividend. In Case C, the investment in respect whereof interest was payable had been sold together with the dividend accruing at the date of the death of the tenant for life. The rule here was that there was no apportionment of the purchase price in favour of the legal personal representatives of the tenant for life. This rule was recognised in *Bulkeley* v. *Stephens*, *supra*, and applied in *In re Walker* [1934] W.N. 104, and *In re Firth ; Sykes* v. *Hall*, *supra*. But in *In re Winterstoke's Will Trusts*, *Gunn* v. *Richardson* [1938] Ch. 158, Clauson, J., as he then was, did not apply it to the facts of the case then before him. When an investment was sold cum-dividend it was a difficult matter to ascertain by what sum the purchase price was increased by reason of the fact that a dividend was accruing at the date of the sale. This was some justification for the rule that in Case C there was no apportionment. The residuary legatees suggested that appropriation by the trustees was equivalent to a sale of the investments and a re-investment, and this case fell within Case C, and there should be no apportionment. The matter must be dealt with on a more realistic footing. The trustees did not sell the investments and part of the interest received must be paid to the personal representatives of the tenant for life. The trustees had valued the investments appropriated on the wrong basis and a further sum equivalent to the sum paid to the legal personal representatives of the tenant for life must be appropriated to make up the £100,000.

COUNSEL : *L. F. Mumford* appeared for the Public Trustee ; *Pennycuick* for the tenant for life's executors and trustees ; *Hillaby* for the residuary legatee ; *Andrewes Uthwatt* for the Attorney-General.

SOLICITORS : *Waltons & Co. ; R. S. Fraser & Co. ; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

An the annual meeting to be held on the 7th May next the Directors of the Legal & General Assurance Society, Ltd., will recommend payment of a final dividend for the year 1939 at the rate of 2s. per share, less income tax, payable on the 1st July, 1940.

Camden Nominees, Ltd. *v.* **Forcey and Another.**

Simonds, J. 27th February, 1940.

CONTRACT—LANDLORD AND TENANT—INTERFERENCE WITH CONTRACTUAL RIGHTS—ALLEGED BREACH OF CONTRACT BY LANDLORD—PROCURING NON-PAYMENT OF RENT BY TENANTS—JUSTIFICATION.

The plaintiff company were the owners of a block of flats known as Highstone Mansions, Camden Road, N.W. These flats were let to some sixty different tenants. The tenancy agreement in each case was in a standard form. It contained an undertaking by the tenant to pay rent, generally monthly in advance, and the plaintiffs undertook *inter alia* to light the staircase and landings and to maintain constant hot water and central heating. The two defendants were tenants of the flats. In the autumn of 1939 certain of the tenants complained that the plaintiffs were not duly fulfilling their obligations as landlords under the respective tenancy agreements. The first defendant wrote complaining and intimated that she would withhold her rent. It was alleged that a tenants' association was then formed and a meeting of tenants was held in the second defendant's flat. A committee was elected of which the first defendant was chairman and the second defendant secretary. At a subsequent meeting of the association, it was resolved that a letter stating the tenants' complaints should be sent to the plaintiffs and, if a satisfactory response was not given, rents should be withheld. Subsequently a common-form letter was drafted informing the plaintiffs that rent would be withheld. Letters in this form were sent by some sixteen tenants in November and early December, 1939, to the plaintiffs and rent in some cases was not paid. On the 15th December the plaintiffs issued the writ in this action claiming an injunction to restrain the two defendants from doing any acts, or making any statements, or taking any steps calculated or intended to induce the tenants of the plaintiffs' flats to commit breaches of their tenancy agreements by a refusal to pay their rents. The plaintiffs applied by motion for an interim injunction and the motion was treated as the trial of the action. The defendants denied that they had induced any of the tenants to withhold the payment of rent. They alleged that the tenants had acted voluntarily.

SIMONDS, J., said: The law was that if A, without justification, knowingly interfered with a contract between B and C, he committed an actionable wrong. The difficulty arose on the words "without justification." Two questions had to be considered: (1) Had the defendants knowingly interfered with the contracts between the plaintiffs and their tenants, or did they threaten to do so? (2) If they had done so, had they justification in law for doing so? On the evidence, he found that the defendants had knowingly interfered with the contracts between the plaintiffs and their tenants. The second question therefore arose, namely, whether they had any justification for so doing. It was an actionable wrong, without justification, to interfere with the contractual rights of another. That was established by the decisions in *Lumley* v. *Gye* (1853), 2 E. & B. 216; *Bowen* v. *Hall* (1881), 6 Q.B.D. 333, and *Temperton* v. *Russell* [1893] 1 Q.B. 715. The question was what amounted to justification. This matter was discussed in *Quinn* v. *Leathem* [1901] A.C. 495; *South Wales Miners' Federation* v. *Glamorgan Coal Company* [1905] A.C. 239; and *Smithies* v. *National Association of Operative Plasterers* [1909] 1 K.B. 310, and in those cases the procurement of the breaches of contract there complained of was held not to be justified. In *Brimelow* v. *Casson* [1924] 1 Ch. 302, Russell, J., as he then was, had held that the defendants were justified in procuring the breach of their contracts by a number of chorus girls, as they owed a duty to their members to take all necessary peaceful steps to terminate the payment of an insufficient wage. In the present case the defendants justified their conduct on two grounds: first, that of common interest in compelling the landlords to fulfil their obligations; and secondly, that as tenants were weak and landlords were strong, it was justifiable for the defendants to use a weapon which would otherwise be wrongful. There was no validity in either of those contentions. The defendants owed no duty to their fellow tenants. The performance by the landlords of their obligations could be enforced either by an action for damages for breach of contract or for specific performance. The second contention was one that was directed less to reason than emotion. The case was put as being analogous to *Brimelow* v. *Casson*, *supra*, any step which put an end to intolerable conditions being regarded as justifiable. *Brimelow* v. *Casson*, *supra*, had been the subject of a good deal of controversy. In a comparable case it would be his duty to follow it, but there was no real analogy between the two cases. It was a dangerous proposition to say that inequality of wealth or position justified a course otherwise legally actionable. Those who advised the withholding of rent could not justify their action by protesting that they were performing a public service. He accordingly granted an injunction in the terms of the notice of motion and, the plaintiffs having stated that they would be satisfied with nominal damages, he awarded to them 20s. and costs.

COUNSEL: *Sir George Jones* and *S. W. Magnus*; *H. Lester*.
SOLICITORS: *Phœnix, Levinson, Walters & Shane*; *S. Seifert*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

***Re* Booth's Will Trusts; Robbins** *v.* **King.**

Farwell, J. 11th March, 1940.

WILL—CONSTRUCTION—GIFT OVER IF NAMED BENEFICIARY "SHALL DIE" IN THE LIFETIME OF TESTATRIX—BENEFICIARY DEAD AT DATE OF WILL—WORDS OF FUTURITY—VALIDITY OF GIFT OVER.

The testatrix made her will in 1934 and by cl. 14 she devised certain ground rents to her trustees upon trust to sell and to stand possessed of the net proceeds upon trust for such of six named persons as should be living at her death in equal shares. Clause 14 then continued: "Provided and I hereby declare that if any of such last-mentioned persons shall die in my lifetime and leave children then such children shall take, if more than one, equally between them the share which their parent would have taken if he or she had survived me and attained a vested interest." The testatrix died in 1938. Two of the persons named in cl. 14 were dead at the date of the will. It appeared from the evidence that in the case of one of these beneficiaries this fact was known to the testatrix at that date. The trustees of the will took out this summons for the determination of the question whether the substitutionary provision in cl. 14 in favour of the children of the six named beneficiaries was operative, in the case of a beneficiary who was dead at the date of the will.

FARWELL, J., said it was contended that the words "shall die in my lifetime" necessarily pointed to futurity and could not apply to the case of a person who was dead at the time when those words were inserted in the will. In *In re Walker*, *Walker* v. *Walker* [1930] 1 Ch. 469; 74 SOL. J. 106, Lawrence, L.J., said: "In my opinion it is firmly settled by authority binding upon this court that the expression 'shall die' must be given its primary meaning of 'shall hereafter die' unless there is a context showing that the expression is not used in a strictly future sense. It seems to me that there is no such context in the present case." At first sight it would appear that that decision was conclusive in the present case. In that case, however, the gift was to a class, whereas in the present case it was to individuals. *Ive* v. *King*, 16 Beav. 46, and various statements in text-books, showed that there was a distinction to be made when applying this rule to the case of a gift to named individuals. It was easier, in such a case, to suppose, when the testator or testatrix knew at the date of the will that one of these named individuals was dead, that the words "shall die" were not used in their strict

sense. If the words were given their strict meaning in the case of a gift to individuals, one could only impute to the testator or testatrix a rather grim practical joke. In the present case, in the opinion of the learned judge, the testatrix, in using the words "shall die in my lifetime," was not referring only to death at a future date but was extending them to include persons who were dead at the date of her will. He accordingly declared that the substitutionary provision in favour of the children of the six persons named in the will was operative, whether such persons were alive at the date of the will or not.

COUNSEL: *Eardley-Wilmot; Turnbull; Horace Freeman; J. V. Nesbitt; Timins; Maurice Berkeley; Dare.*

SOLICITORS: *Robbins, Olivey & Lake; Farman, Steel & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Thornton *v.* Mitchell.

Lord Hewart, C.J., Humphreys and Hilbery, JJ.
17th January, 1940.

ROAD TRAFFIC—OMNIBUS—CHARGE OF DRIVING WITHOUT DUE CARE AND ATTENTION AGAINST DRIVER DISMISSED—CONVICTION OF CONDUCTOR ON CHARGE OF AIDING AND ABETTING—VALIDITY.

Appeal by case stated from a decision of Rochdale justices.

An omnibus of which the appellant, Thornton, was conductor, and which was driven by one, Hollinrake, arrived at a road junction where all passengers disembarked, on an evening in March, 1939. Before the driver reversed the omnibus, the conductor looked out of the back to see if the road were clear, and rang the bell three times as a signal to the driver to reverse. The conductor, in accordance with the usual practice, was on the platform at the back of the omnibus when he gave the signal. Visibility was poor. After giving the signal the conductor jumped off the omnibus. The vehicle was reversed slowly but two persons who had just dismounted from it were knocked down by the back as it was reversing, one of whom received fatal injuries. The driver could not see any person immediately behind the omnibus when reversing owing to the obstruction caused by steps to the upper deck and to the height of the window at the back, and therefore had to rely on the conductor's bell signal. Two informations were accordingly preferred by the respondent Mitchell against the driver under s. 12 (1) of the Road Traffic Act, 1930, for driving a motor-omnibus without due care and attention, and for driving without reasonable consideration for other persons using the road. Two informations were also preferred by the respondent against the appellant conductor under s. 5 of the Summary Jurisdiction Act, 1848, for aiding and abetting the respective offences alleged against the driver. The magistrates dismissed both the informations preferred against the driver, but convicted the conductor on the first of the informations preferred against him, dismissing the second. After the decision of the court had been given, it was contended for the conductor that, as the information against the principal for driving without due care and attention had been dismissed, the conductor could not be convicted of aiding and abetting the principal in what the principal was not doing; and that he could not be convicted as principal because on the particular words of s. 12 (1) of the Road Traffic Act, 1930, only the driver could be guilty of the principal offence. He now appealed against his conviction.

LORD HEWART, C.J., said that the case was *a fortiori* as compared with *Morris* v. *Tolman*, in which Avory, J., had said ([1923] 1 K.B. 166, at p. 171): "In order to convict, it would be necessary to show that the respondent was aiding the principal, but a person cannot aid another in doing something which that other has not done." In the present case the magistrates had said in one breath that the principal had done nothing which he ought not to have done, and in the next that the conductor had aided and abetted him in doing something which he should not have done. The case was too plain for argument. It was quite clear that the appeal must be allowed and the conviction quashed.

HUMPHREYS and HILBERY, JJ., agreed.

COUNSEL: *J. H. Oliver; Ralph Etherton.*

SOLICITORS: *Pattinson & Brewer*, for *J. Bright Clegg & Son*, Rochdale; *Norton, Rose, Greenwell & Co.*, for *Sir George Etherton*, Preston.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rubie *v.* Faulkner.

Lord Hewart, C.J., Hilbery and Hallett, JJ.
19th January, 1940.

ROAD TRAFFIC—MOTOR-CAR DRIVEN BY LEARNER-DRIVER—PASSENGER ACTING AS SUPERVISOR—DRIVER NEGLIGENT—SUPERVISOR PASSIVE—LIABILITY FOR AIDING AND ABETTING.

Appeal by case stated from a decision of Saffron Walden, Essex, justices.

On the 29th March, 1939, one, James, was driving his motor-car along a public road. He held a provisional licence issued under s. 5 (3) of the Road Traffic Act, 1930. The motor-vehicle displayed the "L" sign provided for by reg. 16 (3) (*c*) of the Motor Vehicles (Driving Licences) Regulations, 1937. The appellant, Rubie, was in the car with James as a "supervisor" in accordance with reg. 16 (3) (*a*). As a competent driver he had undertaken to act in that capacity at James's request. At a bend, James drew out from behind, and tried to overtake, a horse and cart, being unable, owing to the bend, to see a motor-lorry approaching from the opposite direction. His engine stopped, however, leaving his car well over the middle of the road, and a collision occurred. Rubie was sitting in the passenger's seat on James's left-hand side. He saw the horse and cart and the white line in the centre of the road, and he was in a position to see that James was about to overtake the horse and cart on the bend, so taking the car to the off-side of the white line. The justices convicted James of driving without due care and attention, and Rubie of aiding and abetting the commission of the offence. Rubie appealed.

LORD HEWART, C.J., said that reg. 16 (3) (*a*) of the Motor Vehicles (Driving Licences) Regulations, 1937, clearly provided that before a learner-driver could lawfully drive a motor-vehicle on a highway he must act under someone who had to perform the duty of supervision. It had been argued that, partly because the time occupied by the events leading up to the accident had been so short, the appellant was not called on to do or to say anything, but was justified in what the justices had described as his passive conduct. That argument gave the go-by to the obvious intention of the regulation; the only condition on which a learner-driver was allowed to drive a motor-vehicle on the highway was that he was under the supervision of an experienced driver; the essence of the matter was that there must be a supervisor competent to supervise. That being clear, it was a pure question of fact for the justices to decide whether the regulation had been complied with. It was open to them to find that, by remaining passive when the circumstances demanded that he should be active even only by exclaiming "Keep in," Rubie had not discharged the duty which he had undertaken. The appeal must be dismissed.

HILBERY and HALLETT, JJ., agreed.

COUNSEL: *Marriott*, K.C., and *Vine* for the appellant; *G. Pollock* for the respondent.

SOLICITORS: *Amery-Parkes & Co.*; *The Prosecuting Solicitor*, County Hall, Chelmsford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Barnes; R. *v.* Richards.

Lord Hewart, C.J., Hilbery and Hallett, JJ.
23rd January, 1940.

CRIMINAL LAW—PROCEDURE—SEVERAL PRISONERS CHARGED TOGETHER—INCIDENTAL INCULPATION OF ONE PRISONER BY EVIDENCE OF OTHER GIVEN ON OWN BEHALF—NO REASON FOR GRANTING SEPARATE TRIALS—DISCRETION OF JUDGE—EVIDENCE OF ONE PRISONER ON OWN BEHALF NOT RELIED ON BY PROSECUTION AGAINST OTHER—NO NECESSITY FOR WARNING TO JURY ABOUT CORROBORATION.

Appeals from convictions.

The appellants were accused of murder, with another man and two women who were acquitted, in connection with the explosion of a bomb in Coventry in August, 1939, as a result of which five persons were killed. Having been convicted and sentenced to death, they now appealed on the grounds (*a*) that they should have been tried separately, and (*b*) that the judge failed in his summing-up to warn the jury not to accept the evidence of the two accused women without being satisfied that it was corroborated.

LORD HEWART, C.J., delivering the judgment of the court, said that on the first point it was argued that the statements which had been made by the women, who afterwards came to be in the dock, were statements which had the effect of inculpating one, at least, of the appellants; and, in view of that fact, it was argued that there was a duty on the judge to order separate trials. There was no longer any room for doubt or difference with regard to the law on that point. The question whether there should be separate trials was one for the discretion of the judge. In the opinion of the court there was no ground for the contention that it was necessary for the due administration of justice that the trials should be separated. Much stress was laid by counsel for the appellants on a passage in *R.* v. *Bywaters* (17 Cr. App. R. 66, at p. 69). It was quite obvious that what was there meant was that, where it appeared that an essential part of one prisoner's defence was, or amounted to, an attack on another prisoner, then a separate trial should take place. It was idle to contend in the present case that it had been of the essence of the evidence or the statements of the third man or of the two women to attack either of the appellants. The mere fact that in the course of excusing themselves they made observations which might have the effect of throwing blame on others who were in the dock was no sufficient reason why the trials should have been separated. Counsel's chief argument, however, was that there ought to have been a direction to the jury that the evidence of the two women required corroboration. They, however, were not called as witnesses for the prosecution; they went into the witness box to give evidence, and gave it, on their own behalf. The rule with regard to corroboration of accomplices did not seem to apply to such a case. His lordship referred to *R.* v. *Baskerville* [1916] 2 K.B. 658, at p. 665, and said that in no respect was it true to say that the evidence referred to by counsel on this point was evidence called by the prosecution; nor were the jury being asked by the prosecution to act on the evidence given by either of those two women. The search was vain for any case in which it had been decided that, where prisoners, tried together on a charge of being jointly concerned in the commission of a crime, elected to give evidence and where, in doing so, one of them happened incidentally to make a statement which told against another of the persons accused, it was requisite that the warning about the evidence of accomplices should be given. *R.* v. *Martin*, 5 Cr. App. R. 4, at p. 6, threw useful light on this part of the case. The appeals must be dismissed.

COUNSEL: *Albert Wood* and *D. Jenkins*; *O'Sullivan*, K.C., and *A. Ward*.

SOLICITORS: *W. J. Mealand*, Coventry; *The Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Reviews.

Latey's Law and Practice in Divorce and Matrimonial Causes. By WILLIAM LATEY, M.B.E., of the Middle Temple, Barrister-at-Law, and D. PERRONET REES, of the Divorce Registry. Twelfth Edition. 1940. Demy 8vo. pp. xcv and (with Index) 1279. London: Sweet & Maxwell, Ltd. Price £3 3s. net.

Nine years have elapsed since the appearance of the last edition of this work in 1931, so that, apart from the radical alterations of the law and the practice brought about by the Matrimonial Causes Act, 1937, and the Matrimonial Causes Rules, 1937, there were many matters to incorporate and record. This task has been admirably performed in this, the most discursive of the divorce text-books, although the spirit of criticism does not seem to be so active in the editors as it was in the last edition. To take a small example, the decision in *Collins* v. *Att.-Gen.* (1931), 47 T.L.R. 484, is reproduced on p. 325 without the comment that it is a true one in conformity with the principles of private international law, and therefore sound, but is difficult to square with the provision in s. 1 (2) of the Legitimacy Act, 1926, to the effect that nothing in the Act shall operate to legitimate a person whose father or mother was married to a third person when the legitimate person was born, though falling also within the language of s. 8. The sections on desertion have, of course, had to be drastically re-modelled and expanded, and they provide very clear guidance in the difficult questions continually arising in connection with statutory desertion. Solicitor practitioners will welcome the special treatment which has been given to questions of tax in connection with alimony and maintenance and the large section devoted to summary jurisdiction. The book is, perhaps, a little spoilt, not by misprints (a few of which are to be found—one notably, on p. 59, where the word "jurisdiction" is printed, but should read "protest," in line 27), but by having such a large addendum.

Books Received.

Law for Hospital Authorities. By Capt. J. E. STONE, M.C., F.S.A.A., F.R. Econ. S. With a Foreword by The Rt. Hon. LORD SANKEY, P.C., G.B.E., and Introduction by The Rt. Hon. LORD COZENS-HARDY, D.L. 1940. Demy 8vo. pp. xix and (with Index) 488. London: Faber and Faber. Price 30s. net.

Defence Regulations (being Regulations made under the Emergency Powers (Defence) Act, 1939, printed as amended up to and including 19th March, 1940). London: H.M. Stationery Office. Price 2s. 6d. net.

Loose-Leaf War Legislation. Part 1, 1940. Edited by JOHN BURKE, Barrister-at-Law. London: Hamish Hamilton (Law Books), Ltd. Price 5s. per part, net.

A.B.C. of War-time Law. By ROBERT S. W. POLLARD, Solicitor. Legal Edition. 1940. pp. 130 and (with Index and Appendix of Authorities and Notes) 26. London: Hamish Hamilton (Law Books), Ltd. Price 2s. 6d. net.

The Stock Exchange Official Year Book, 1940. Compiled and edited by The Secretary of the Share and Loan Department of the Stock Exchange. Crown 4to. pp. (with Index) ccxxxvi and 3,642. London: Thomas Skinner & Co. (Publishers), Ltd. Price £3 10s. net.

The Juridical Review. Vol. LII. No. 1. March, 1940. Edinburgh: W. Green & Son, Ltd. Price 5s. net.

Obituary.

Sir STUART SANKEY.

Sir Herbert Stuart Sankey, K.B.E., C.V.O., died on Friday, 5th April, at the age of eighty-five. He was educated at Marlborough and Christ Church, Oxford, and was called to the Bar by the Inner Temple in 1878. He practised on the South-Eastern Circuit, and for a time was one of the Counsel for the Treasury. He had held the Recorderships of Fordwich and Faversham, and Margate, and for fourteen years was Remembrancer of the City of London. From 1909 to 1913 he commanded the Inns of Court O.T.C.

Mr. W. S. RAINEY.

Mr. Walter Scott Rainey, solicitor, of Messrs. Walkers, Rainey & Owen, solicitors, of Spilsby, died on Saturday, 30th March, at the age of seventy-eight. Mr. Rainey was admitted a solicitor in 1884.

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 3rd April. Mr. Henry White, M.A. (Winchester), was in the chair, and the following Directors were present: Mr. Gerald Keigh, O.B.E. (Vice-Chairman), Mr. G. L. Addison, Mr. P. D. Botterell, C.B.E., Mr. R. Bullin, T.D., J.P. (Portsmouth), Mr. A. J. Cash (Derby), Mr. C. H. Culross, Mr. T. S. Curtis, and Mr. E. F. Dent. The Chairman referred to the grievous loss sustained by the Association by the death of Mr. Harvey F. Plant, who had been a Director since 1931 and had held the office of Chairman from 1938–1939. Mr. Plant had been a most energetic worker for the Association, and owing to his efforts there had been a substantial increase in the membership last year. It was resolved that an expression of appreciation of the late Mr. Harvey F. Plant's services and work for the Association be recorded upon the minutes, and that a vote of sympathy from the Directors be forwarded to Mrs. Plant and to the partners in Messrs. Gregory, Rowcliffe & Co. At the meeting £2,279 was distributed in grants to necessitous cases and four new members were admitted. All solicitors in England and Wales are earnestly asked to support this Association—the benevolent fund of their own profession—(minimum annual subscription £1 1s., life membership £10 10s). Cheques should be made payable to the Solicitors' Benevolent Association and sent to the Secretary, at the offices of the Association, Clifford's Inn, E.C.4.

Solicitors' Clerks' Pension Fund.

The Tenth Annual Meeting of this fund was held on Thursday, 4th April, in the Court Room of The Law Society, 60, Carey Street, W.C.2. Mr. Bernard H. Drake, C.B.E., in the chair. The Chairman said: "Gentlemen, I have the honour of presenting to you the tenth annual report and statement of accounts. This report covers the twelve months' period ending on the 31st December, 1939, and includes four months of the war. I am glad to be able to say that the war so far has not very materially affected the fund. Naturally fewer entrants have come forward since the 1st September last—that was only to be expected. The membership of the fund, as you will see from the report, was 1,280 at the end of the year. Turning to the accounts, the Chairman said that the contribution and investment income for the year amounted to £28,186. The invested fund has increased by £21,575, and at the end of the year it is shown at £144,036. Detailed particulars of the investments which belong to the pension fund are shown at the end of the accounts. I feel that this fund is now past the stage of infancy. One may now say it is in a period of adolescence and we can look forward to the period, not far distant, of lusty manhood. When the war comes to an end we have no reason to doubt that the fund will continue to progress as it has done in the past. It is essentially sound and fulfils a very real need in the profession." The report and accounts were adopted, and new rules were passed. The address of the fund is 2, Stone Buildings, Lincoln's Inn, London, W.C.2. Telephone, Holborn, 5767.

Liverpool Law Clerk's Society.

The thirty-seventh annual report of the Committee for the year ending 29th February, 1940, was presented at the annual meeting on Tuesday, 19th March. The report shows that the membership of the Society is now 191. The deaths occurred during the past year of Mr. A. E. Chevalier, who was President in the year 1929, and Mr. J. M. Heaney, the Society's Honorary Auditor for many years and a senior member whose keen interest in the welfare of the Society he maintained until the end.

At the last annual general meeting, Mr. Vivian D. Heyne, the President of the Incorporated Law Society of Liverpool, was elected President of the Society for the ensuing year in succession to Mr. Godfrey E. Castle.

The Hon. Treasurer's statement of accounts, duly audited, showed a balance in hand of £71 11s. 6d. in the general fund and £134 12s. 1d. in the benevolent fund.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in The Solicitors' Journal, *from the 16th September, 1939, to the 6th April, 1940, inclusive.)*

Progress of Bills.

House of Lords.

Agricultural Wages (Regulation) Amendment Bill [H.C.].
Read First Time. [10th April.
Societies (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [11th April.

House of Commons.

Solicitors (Emergency Provisions) Bill [H.L.].
Read Third Time. [4th April.
Special Enactments (Extension of Time) Bill [H.L.].
Read Third Time. [9th April.

Statutory Rules and Orders.

No. 461. **Air Navigation.** British Overseas Airways Corporation. The British Overseas Airways Act, 1939 (Appointed Day) Order, dated March 19.

No. 468. **Aliens (Protected Areas) Order,** dated March 29.

No. 458. **Anatomy (England and Wales) Order,** dated March 26.

No. 312/S.14. **Civil Defence** (References to Official Arbiters) (Scotland) Rules, dated March 15.

No. 313/S.15. Civil Defence (References to Official Arbiters) (Scotland) Fees Rules, dated March 15.

No. 456. **Debts Clearing Offices (Spain) (Amendment) Order,** dated March 30.

No. 484. **Emergency Powers (Defence).** Order in Council, dated April 5, adding Regulation 3 to the Defence (Armed Forces) Regulations, 1939.

No. 457. Emergency Powers (Defence) Order, dated March 29, amending the Bacon (Prices) Order, 1940.

No. 464. Emergency Powers (Defence). The Billeting (Northern Ireland) (Amendment) Order, dated March 29.

No. 497. Emergency Powers (Defence). The Control of Chrome, Magnesite and Wolfram (No. 1) Order, dated April 4.

No. 455. Emergency Powers (Defence). The Currency Restrictions (Travellers' Exemption) Amendment Order, dated March 29.

No. 465. Emergency Powers (Defence). Docks. The Port of London (Increase of Charges) Order, dated March 21.

No. 501. Emergency Powers (Defence). Order, dated April 5, amending the Eggs (Maximum Prices) (No. 4) Order, 1939.

No. 466. Emergency Powers (Defence). Harbours. The Port of London Tug Owners (Control of Charges) Order, dated March 21.

No. 481. Emergency Powers (Defence). The Control of Hides and Skins (No. 8) Order, dated April 2.

No. 496. Emergency Powers (Defence). The Control of Iron and Steel (No. 8) Order, dated April 4.

No. 506. Emergency Powers (Defence). The Control of Molasses and Industrial Alcohol (No. 7) Order, dated April 5.

No. 473. Emergency Powers (Defence). The Imported Potatoes (Maximum Prices) Order, dated April 2.

No. 472. Emergency Powers (Defence). The Potable Spirits (Licensing and Control) Order, dated April 2.

No. 460. Emergency Powers (Defence). The Control of Growing Trees (No. 2) Order, 1939, Direction No. 1, dated March 29.

No. 452. **Poisons** (Amendment) Rules, dated March 29.
No. 453. Poisons. List (Amendment) Order, dated March 29.
No. 462. **War Risks (Commodity Insurance) (No. 3) Order,** dated March 30.

Non-Parliamentary Publications.

MINISTRY OF LABOUR AND NATIONAL SERVICE.

National Service (Armed Forces) Act, 1939. Selected decisions given by the Umpire in respect of Applications for Postponement of Liability to be called up for Service in the Armed Forces of the Crown to and including January 31, 1940. (N.S. Code 2) Pamphlet 1/40.

Copies of the above Bills, S.R. & O.'s etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. CHARLES CHIEVELEY IOWERTH WILLIAMS to be the Registrar of Blandford, Bournemouth, Lymington, Poole, Ringwood, Swanage and Wimborne Minster County Courts from the 30th March. Mr. Williams was admitted a solicitor in 1925.

The Colonial Legal Service announce the following promotions, transfers and re-appointments :—

Mr. G. W. McL. HENDERSON, Crown Counsel, Tanganyika Territory, to be Legal Draftsman, Nigeria ; Mr. L. I. N. LLOYD-BLOOD, Attorney-General, Cyprus, to be Puisne Judge of the High Court, Tanganyika.

Mr. C. J. RADCLIFFE, K.C., has been appointed Assistant Director-General of the Press and Censorship Bureau.

Notes.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 1st May, at 11.30 a.m.

Wills and Bequests.

Mr. Adolphus Tooth, solicitor, of Woodside Park, N., left £16,009, with net personalty £14,414.

Mr. Edward Booth Wannop, solicitor, of Summersdale, Chichester, left £21,343, with net personalty £16,702.

Mr. John Watts, solicitor, of, of Upper Deal, Kent, left £37,840, with net personalty £35,301.

Mr. Thomas Widdowson, solicitor's managing clerk, of Sheffield, left £5,956, with net personalty £5,766. He left £150 to the Officers of the 2nd Sheffield Company of the Boys' Brigade.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
April 15	More	Reader	Ritchie
,, 16	Reader	Andrews	Blaker
,, 17	Andrews	Jones	More
,, 18	Jones	Ritchie	Reader
,, 19	Ritchie	Blaker	Andrews
,, 20	Blaker	More	Jones

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT Non-Witness. Mr.	MR. JUSTICE SIMONDS. Witness. Mr.	MR. JUSTICE CROSSMAN. Non-Witness. Mr.	MR. JUSTICE MORTON. Witness. Mr.
April 15	Andrews	More	Blaker	Jones
,, 16	Jones	Reader	More	Ritchie
,, 17	Ritchie	Andrews	Reader	Blaker
,, 18	Blaker	Jones	Andrews	More
,, 19	More	Ritchie	Jones	Reader
,, 20	Reader	Blaker	Ritchie	Andrews

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 25th April, 1940.

	Div. Months.	Middle Price 10 Apl. 1940.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	107	3 14 9	3 9 0
Consols 2½%	JAJO	71	3 10 5	—
War Loan 3% 1955–59	AO	99	3 0 7	3 1 5
War Loan 3½% 1952 or after	JD	98½	3 11 3	—
Funding 4% Loan 1960–90	MN	109	3 13 5	3 7 6
Funding 3% Loan 1959–69	AO	96	3 2 6	3 4 3
Funding 2¾% Loan 1952–57	JD	95½	2 17 7	3 1 11
Funding 2½% Loan 1956–61	AO	89	2 16 2	3 4 8
Victory 4% Loan Av. life 21 years	MS	107½	3 14 5	3 9 10
Conversion 5% Loan 1944–64	MN	108	4 12 7	2 10 7
Conversion 3½% Loan 1961 or after	AO	97¼	3 12 0	—
Conversion 3% Loan 1948–53	MS	100½	2 19 8	2 18 5
Conversion 2½% Loan 1944 49	AO	97	2 11 7	2 17 8
National Defence Loan 3% 1954–58	JJ	99	3 0 7	3 1 5
Local Loans 3% Stock 1912 or after	JAJO	84	3 11 5	—
Bank Stock	AO	330	3 12 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81	3 7 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86	3 9 9	—
India 4½% 1950–55	MN	112	4 0 4	3 1 9
India 3½% 1931 or after	JAJO	94½	3 14 1	—
India 3% 1948 or after	JAJO	81½	3 13 7	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	104xd	3 16 11	3 11 1
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	104	4 6 6	1 16 8
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91	2 14 11	3 4 7
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	104½	3 16 7	3 12 1
Australia (Commonw'th) 3½% 1964–74	JJ	91½	3 11 0	3 14 0
Australia (Commonw'th) 3% 1955–58	AO	89½	3 7 0	3 15 8
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
New South Wales 3½% 1930–50	JJ	97½	3 11 10	3 16 5
New Zealand 3% 1945	AO	95½	3 2 10	4 0 2
Nigeria 4% 1963	AO	106	3 15 6	3 12 5
Queensland 3½% 1950–70	JJ	96½	3 12 6	3 13 10
*South Africa 3½% 1953–73	JD	100	3 10 0	3 10 0
Victoria 3½% 1929–49	AO	97½	3 11 10	3 16 5
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84½	3 11 0	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Leeds 3½% 1958–62	JJ	97½	3 6 8	3 8 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 12 3	—
*London County 3½% Consolidated Stock 1954–59	FA	102	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	84	3 11 5	—
Manchester 3% 1958–63	AO	94	3 3 10	3 7 7
Metropolitan Consd. 2½% 1920–49	MJSD	97½	2 11 3	2 16 4
Metropolitan Water Board 3% "A" 1963–2003	AO	87	3 9 0	3 10 4
Do. do. 3% "B" 1934–2003	MS	88	3 8 2	3 9 5
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
Middlesex County Council 3% 1961–66	MS	94	3 3 10	3 7 0
*Middlesex County Council 4% 1952–72	MN	103½	3 17 4	3 13 2
* Do. do. 4½% 1950–70	MN	108	4 3 4	3 12 2
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	103½	3 17 4	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	113	4 8 6	—
Gt. Western Rly. 5% Preference	MA	99½	5 0 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.